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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

INTELLECTUAL PROPERTY IN GLOBAL CRISES: BALANCING INNOVATION, ACCESS, AND EQUITY IN THE CONTEXT OF COVID-19 AND CLIMATE CHANGE

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Abstract

Intellectual Property (IP) law plays a central role in regulating the protection and commercialization of intangible creations, while simultaneously balancing innovation incentives with public interest considerations. Anchored in the global framework established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), IP regimes across jurisdictions seek to harmonize standards of protection while allowing limited policy flexibility. However, global crises such as the COVID-19 pandemic and climate change have exposed structural tensions within this framework, particularly between proprietary rights and equitable access to essential technologies. This paper critically examines the role of intellectual property law in addressing these challenges. It analyses the impact of IP protection on access to medicines and vaccines during the COVID-19 pandemic, highlighting disparities between developed and developing countries and evaluating mechanisms such as compulsory licensing, government use provisions, and the proposed TRIPS waiver. The study further explores the intersection of IP law and climate change, focusing on the role of patents in incentivizing green technology innovation while simultaneously acting as barriers to technology transfer. Through a comparative analysis of jurisdictions including India, China, Indonesia, Malaysia, Australia, Argentina, and Belgium, the paper demonstrates that national approaches to intellectual property vary significantly based on economic capacity, policy priorities, and institutional frameworks. While some countries adopt flexible, public interest-oriented strategies, others emphasize strong protection and market-based solutions. The paper argues that although the existing IP framework is structurally robust, it remains insufficiently responsive to global emergencies. It concludes that a more flexible, harmonized, and cooperative approach emphasizing effective use of TRIPS flexibilities, enhanced technology transfer, and better integration with public health and environmental policies are

essential to ensure that intellectual property law promotes both innovation and equitable access in an increasingly interconnected world.

Key Words: Intellectual Property, TRIPS Agreement, Public Health, Climate Change, Technology Transfer

Introduction

Intellectual Property (IP) law governs the protection of creations of the human intellect, including inventions, artistic works, trademarks, and innovations, by granting exclusive rights to their creators.¹ These rights are analogous to property rights in that they confer upon the owner the authority to control the use and derive economic benefits from such creations, while also enabling legal remedies in cases of infringement.² The primary objective of intellectual property law is to incentivize innovation and creativity while maintaining a balance between private rights and public interest.

At the international level, intellectual property regulation has been significantly shaped by the World Trade Organization (WTO), which establishes a global framework for trade and intellectual property governance.³ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the WTO, sets minimum standards for the protection and enforcement of intellectual property rights across member states.⁴ India became a member of the WTO on 1 January 1995 and implemented its TRIPS obligations through domestic legislation under Article 253 of the Constitution, thereby aligning its intellectual property regime with global standards while retaining policy flexibility to address domestic needs.⁵

The outbreak of the COVID-19 pandemic marked a critical turning point in the discourse surrounding intellectual property rights. Declared a Public Health Emergency of International Concern by the World Health Organization (WHO) on 30 January 2020, the pandemic disrupted global trade, strained public health systems, and exposed structural inequalities in access to essential medicines and technologies.⁶ While intellectual property rights play a crucial role in incentivizing pharmaceutical innovation, they may also act as barriers to access, particularly in

developing and underdeveloped countries. This tension led to calls, notably by India and South Africa, for a temporary waiver of certain TRIPS obligations to ensure equitable access to COVID-19 vaccines and related technologies.⁷

In India, the impact of the pandemic was reflected not only in public health challenges but also in the functioning of intellectual property institutions. Although physical operations were disrupted, IP offices continued to function through digital platforms, ensuring continuity in registration and enforcement mechanisms.⁸ More importantly, the pandemic reignited discussions on the use of legal flexibilities such as compulsory licensing and government use provisions under the Patents Act, 1970, particularly in the context of public health emergencies. These mechanisms underscore the importance of balancing proprietary rights with the constitutional mandate to protect public health, which has been recognized as an integral component of the right to life under Article 21 of the Constitution.⁹

Parallel to the public health crisis, climate change represents another global challenge where intellectual property law plays a significant role. The increasing threat of global warming and environmental degradation has necessitated the development and transfer of sustainable technologies. Intellectual property rights can act both as incentives for innovation in green technologies and as barriers to their dissemination, especially in developing countries.¹⁰ This dual role highlights the need to critically examine whether the current intellectual property framework adequately facilitates global cooperation in addressing environmental challenges.

The intersection of intellectual property, public health, and climate change reveals fundamental tensions within the global IP regime. While intellectual property rights are essential for fostering innovation and economic growth, their rigid application during global crises may hinder access to essential technologies and exacerbate inequalities. This raises important questions regarding the adequacy of existing legal frameworks and the need for greater flexibility in their application.

Against this backdrop, this paper seeks to critically examine the role of intellectual property law in addressing global crises, with particular focus on the COVID-19 pandemic and climate change. It analyses the effectiveness of international agreements such as TRIPS, the use of domestic legal

mechanisms, and the broader implications of intellectual property protection on access to innovation. The paper argues that while the intellectual property regime is structurally robust, it requires greater harmonization, flexibility, and policy coherence to effectively respond to global emergencies and ensure that the benefits of innovation are equitably distributed.

Intellectual Property and Global Public Health: The COVID-19 Context

The COVID-19 pandemic exposed deep structural inequalities within the global public health system, particularly in relation to access to medicines, vaccines, and medical technologies. While intellectual property (IP) law plays a crucial role in incentivizing pharmaceutical innovation, its application during global health emergencies has raised significant concerns regarding accessibility and equity. The pandemic thus brought into sharp focus the inherent tension between proprietary rights and the right to health, especially in developing countries.

The international legal framework governing intellectual property is primarily shaped by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which establishes minimum standards for patent protection, including pharmaceutical products.¹¹ Under TRIPS, patents grant exclusive rights to inventors for a period of twenty years, enabling them to control the production, use, and distribution of their inventions.¹² While this framework is designed to promote innovation, it may also result in high costs and limited availability of essential medicines, particularly in low- and middle-income countries.

The COVID-19 pandemic intensified these concerns, as the rapid development of vaccines and therapeutics was accompanied by unequal global distribution. Developed countries secured large quantities of vaccines through advance purchase agreements, while many developing countries faced severe shortages. This disparity highlighted the limitations of the existing IP regime in addressing global health crises and led to increased calls for reform.

In response, India and South Africa jointly proposed a temporary waiver of certain TRIPS obligations in October 2020, seeking to suspend the enforcement of patents, copyrights, industrial designs, and trade secrets related to COVID-19 technologies.¹³ The objective of the waiver was to

facilitate the scaling up of production and ensure equitable access to vaccines, diagnostics, and treatments. The proposal received significant support from developing countries and public health advocates, who argued that extraordinary circumstances warranted extraordinary measures.

However, the waiver proposal also faced strong opposition from several developed countries and pharmaceutical companies, which contended that intellectual property rights are essential for incentivizing innovation and ensuring the continued development of new technologies. Critics of the waiver argued that removing IP protections would not necessarily lead to increased production, as manufacturing vaccines requires complex technology, specialized infrastructure, and technical expertise.¹⁴ This debate underscored a fundamental divide in global IP governance, reflecting differing priorities between innovation incentives and public health needs.

In addition to international measures, domestic legal mechanisms also play a crucial role in addressing public health emergencies. The TRIPS Agreement itself incorporates certain flexibilities, allowing member states to take measures to protect public health.¹⁵ One of the most significant of these is compulsory licensing, which permits governments to authorize the use of patented inventions without the consent of the patent holder under specific conditions.

In India, this mechanism is codified under Section 84 of the Patents Act, 1970, which allows compulsory licenses to be granted in cases where the reasonable requirements of the public are not satisfied, or where the patented product is not available at an affordable price.¹⁶

The relevance of compulsory licensing during the COVID-19 pandemic was widely debated, as governments explored ways to ensure access to life-saving technologies. Although India did not formally issue compulsory licenses for COVID-19 vaccines, the possibility of invoking such provisions acted as a regulatory tool to encourage voluntary licensing and technology transfer agreements.¹⁷ This demonstrates the importance of legal flexibilities in maintaining a balance between intellectual property rights and public health objectives.

Another important aspect of the IP-public health interface is the role of government use provisions, which allow the state to utilize patented inventions for public purposes without the authorization

of the patent holder. Under Section 100 of the Patents Act, the government is empowered to use patented inventions in situations of national emergency or extreme urgency.¹⁸ Such provisions are particularly relevant in the context of pandemics, where timely access to medical technologies is critical.

Despite the availability of these flexibilities, their practical implementation often faces challenges, including procedural complexities, political considerations, and international pressure. Developing countries may be reluctant to invoke compulsory licensing or government use provisions due to concerns about trade relations and investment climate.¹⁹ This highlights a broader issue within the global IP system—while legal mechanisms exist to address public health needs, their effectiveness depends on the willingness and capacity of states to utilize them.

From a critical perspective, the COVID-19 pandemic revealed significant shortcomings in the global intellectual property regime. While IP rights have undoubtedly contributed to the rapid development of vaccines and therapeutics, they have also contributed to unequal access and distribution. The concentration of manufacturing capabilities and technological know-how in a limited number of countries further exacerbated these inequalities.

The pandemic also underscored the need for greater international cooperation and policy coherence. Initiatives such as voluntary licensing, patent pooling, and technology transfer mechanisms can play an important role in improving access to essential medicines. However, these measures must be complemented by structural reforms that address the underlying imbalances in the global IP system.

In conclusion, the COVID-19 pandemic has fundamentally reshaped the discourse on intellectual property and public health. It has highlighted the need for a more flexible and responsive IP framework that is capable of addressing global emergencies while maintaining incentives for innovation. Achieving this balance requires not only legal reform but also a shift in policy priorities toward greater equity and access in the global distribution of healthcare technologies.

Intellectual Property, Climate Change, and Technology Transfer

Climate change represents one of the most pressing global challenges of the twenty-first century, requiring urgent and coordinated international action. The development and dissemination of environmentally sustainable technologies are central to addressing this crisis. In this context, intellectual property (IP) law plays a complex and often contradictory role. While it incentivizes innovation in green technologies by granting exclusive rights to inventors, it may also restrict access to such technologies, particularly for developing countries that lack the financial and technological capacity to develop them independently.

The global legal framework governing intellectual property in relation to climate change is primarily shaped by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which mandates minimum standards for patent protection across member states.²⁰ Under TRIPS, patents provide inventors with exclusive rights over their inventions, thereby encouraging investment in research and development.²¹ This framework has contributed to significant advancements in renewable energy, energy efficiency, and other environmentally sustainable technologies.

However, the same system that incentivizes innovation can also create barriers to the transfer of technology. Patent protection often results in high licensing costs, limiting the ability of developing countries to access critical green technologies. This issue is particularly significant in the context of climate change, where global cooperation and technology sharing are essential for effective mitigation and adaptation. The concentration of technological innovation in developed countries further exacerbates this imbalance, creating a dependency that hinders the capacity of developing nations to respond to environmental challenges.

The principle of technology transfer is recognized in international environmental law as a key mechanism for addressing climate change. Agreements such as the United Nations Framework Convention on Climate Change (UNFCCC) emphasize the importance of facilitating access to environmentally sound technologies for developing countries.²² However, the interaction between these environmental commitments and intellectual property rights remains complex and

often contentious. While TRIPS includes provisions that encourage technology transfer, particularly under Article 66.2, their implementation has been criticized as inadequate and largely ineffective.²³

In response to these challenges, various approaches have been proposed to reconcile intellectual property protection with the need for technology dissemination. One such approach is the use of compulsory licensing for environmentally significant technologies, similar to its application in the public health context. While this mechanism has the potential to enhance access, its application in the climate change context remains limited due to political and economic considerations.²⁴

Another important development is the emergence of voluntary licensing and patent pooling initiatives aimed at facilitating the sharing of green technologies. These mechanisms allow patent holders to license their technologies on more flexible terms, thereby promoting wider access while retaining control over their intellectual property. However, such initiatives are largely dependent on the willingness of private entities and may not provide a comprehensive solution to the challenges of technology transfer.

The concept of “TRIPS-plus” obligations further complicates the landscape. These provisions, often included in bilateral and regional trade agreements, impose higher standards of intellectual property protection than those required under TRIPS.²⁵ For developing countries, compliance with TRIPS-plus obligations may limit policy flexibility and restrict the use of measures such as compulsory licensing. This can have significant implications for access to green technologies, as stricter IP protections may further increase costs and reduce availability.

A comparative perspective reveals that different countries have adopted varied approaches to balancing intellectual property protection with environmental objectives. Countries such as China have actively invested in domestic innovation while also utilizing flexible IP policies to promote technology transfer.²⁶ Similarly, nations like Indonesia and Malaysia have implemented legal frameworks that comply with TRIPS while seeking to address local developmental needs.²⁷ These examples demonstrate that it is possible to design IP regimes that support both innovation and access, although such approaches require careful calibration of legal and policy instruments.

From a critical standpoint, the role of intellectual property in the context of climate change must be understood as both enabling and constraining. While IP protection is essential for incentivizing the development of new technologies, an overly rigid system may hinder the rapid dissemination of innovations necessary to address global environmental challenges. The current framework tends to prioritize private rights over collective interests, raising questions about its suitability in the context of a global crisis that requires shared solutions.

Furthermore, the lack of effective coordination between intellectual property law and environmental policy represents a significant gap in the global governance framework. While environmental agreements emphasize the importance of technology transfer, they often lack enforceable mechanisms to ensure compliance. Conversely, intellectual property agreements provide strong enforcement mechanisms but may not adequately account for environmental considerations. Bridging this gap requires greater integration between these legal regimes and a more holistic approach to global governance.

In conclusion, the intersection of intellectual property law and climate change presents a complex set of challenges that require a careful balancing of competing interests. While the existing framework has contributed to technological innovation, it has not fully addressed the need for equitable access to green technologies. A more flexible and cooperative approach, incorporating both legal reforms and policy initiatives, is essential to ensure that intellectual property serves as a tool for sustainable development rather than a barrier to it.

Comparative Study of Intellectual Property Regimes in Selected Countries

A comparative examination of intellectual property (IP) regimes across jurisdictions reveals diverse approaches in balancing innovation incentives with public interest considerations, particularly in the contexts of public health and climate change. While all countries examined—India, China, Indonesia, Malaysia, Australia, Argentina, and Belgium—are signatories to the TRIPS Agreement, their domestic implementation and policy priorities vary significantly, reflecting differences in economic development, institutional capacity, and regulatory philosophy. India's intellectual property regime is characterized by a strong emphasis on public interest

safeguards within a TRIPS-compliant framework. Provisions such as compulsory licensing and strict patentability standards reflect a deliberate effort to prevent monopolistic abuse and ensure access to essential medicines.³³ India's leadership in advocating for the TRIPS waiver during the COVID-19 pandemic further demonstrates its commitment to prioritizing equitable access over rigid enforcement of IP rights. However, challenges remain in facilitating large-scale technology transfer, particularly in the climate change context.

China, in contrast, has adopted a state-driven and innovation-oriented IP strategy, combining strong enforcement mechanisms with substantial investment in domestic research and development.³⁴ This approach has enabled China to become a global leader in green technologies, particularly in renewable energy sectors. Unlike India, China relies less on TRIPS flexibilities and more on state-supported industrial policy to enhance technological self-sufficiency and reduce dependence on foreign innovations.

Indonesia and Malaysia represent developing country models that formally comply with TRIPS while attempting to balance domestic needs. Indonesia's IP regime includes provisions for compulsory licensing and public health safeguards, but its effectiveness is constrained by limited institutional capacity and technological dependence.³⁵ Malaysia, on the other hand, has adopted a more structured approach, combining legal reforms with government-led innovation policies. It has demonstrated a willingness to utilize TRIPS flexibilities while also promoting foreign investment and technology transfer.³⁶

Australia presents a contrasting model as a developed country with a highly structured and enforcement-oriented IP regime. Its legal framework emphasizes strong patent protection and adherence to TRIPS-plus standards, often implemented through bilateral and regional trade agreements.³⁷ During the COVID-19 pandemic, Australia opposed broad IP waivers, favoring voluntary licensing and market-based solutions. In the context of climate change, Australia supports innovation through strong IP protection but relies on private sector mechanisms for technology dissemination rather than state intervention.

Belgium, as a member of the European Union, operates within a highly harmonized regional IP

framework that emphasizes strong protection and enforcement.³⁸ The European model generally prioritizes innovation incentives and market stability, often adopting a cautious approach toward TRIPS flexibilities. During the COVID-19 crisis, the European Union, including Belgium, expressed reservations about broad TRIPS waivers, instead advocating for alternative mechanisms such as voluntary licensing and global cooperation initiatives. In the climate change context, Belgium benefits from access to advanced technologies within the EU but does not face the same access challenges as developing countries.

Argentina represents a unique model among developing countries, characterized by a relatively flexible approach to intellectual property protection. Historically, Argentina has adopted policies that prioritize public health and domestic industry over strict IP enforcement.³⁹ It has utilized mechanisms such as compulsory licensing and price controls to ensure access to medicines. However, this approach has also led to tensions with international trade partners and concerns regarding investment and innovation incentives. In the context of climate change, Argentina faces similar challenges to other developing nations, including limited access to green technologies and dependence on foreign innovation.

A comparative analysis of these jurisdictions reveals several key insights. First, while all countries adhere to TRIPS obligations, the extent to which they utilize available flexibilities varies significantly. Developing countries such as India and Argentina have been more proactive in invoking public interest safeguards, whereas developed countries such as Australia and Belgium tend to prioritize strong IP protection and market-based solutions.

Second, the relationship between intellectual property and innovation is influenced by domestic capacity. China's success demonstrates that strong IP protection can coexist with rapid innovation when supported by substantial state investment. In contrast, countries with limited technological infrastructure may find that strict IP regimes reinforce dependency on foreign technologies.

Third, the issue of technology transfer remains a central challenge across all jurisdictions. While international agreements recognize its importance, practical barriers—including high costs, restrictive licensing terms, and limited infrastructure—continue to impede access, particularly in

developing countries. This challenge is especially critical in the context of climate change, where global cooperation is essential.

Finally, the comparative study highlights that intellectual property regimes are deeply influenced by broader economic and political considerations. Countries adopt strategies that align with their developmental priorities, resulting in significant variation in how IP law is implemented and enforced.

In conclusion, the comparative analysis demonstrates that while the TRIPS framework provides a common baseline, national approaches to intellectual property vary widely in their emphasis on innovation, access, and public interest. The experiences of India, China, Indonesia, Malaysia, Australia, Argentina, and Belgium underscore the need for flexible and context-specific IP policies that can effectively address global challenges such as pandemics and climate change while promoting equitable access to innovation.

Conclusion and Suggestions

The foregoing analysis demonstrates that intellectual property (IP) law operates at the intersection of innovation, access, and global equity. While the existing IP framework— anchored in the TRIPS Agreement—has been instrumental in incentivizing technological advancement and fostering international harmonization, its performance during global crises such as the COVID-19 pandemic and climate change reveals structural limitations. The core tension lies in reconciling exclusive proprietary rights with urgent public interest imperatives, particularly in contexts where access to life-saving medicines and environmentally sustainable technologies is critical.

The COVID-19 pandemic exposed the asymmetries embedded within the global IP regime. Although patents facilitated rapid vaccine development, they also contributed to unequal access, with developing countries facing significant delays in obtaining essential medical technologies. The debates surrounding the TRIPS waiver highlighted a broader normative divide between developed and developing nations—one prioritizing innovation incentives and the other emphasizing equitable access. While mechanisms such as compulsory licensing and government

use provisions exist within the TRIPS framework, their limited and cautious application underscores the gap between legal availability and practical usability.

Similarly, in the context of climate change, intellectual property law presents a dual character. On one hand, it encourages investment in green technologies; on the other, it may hinder their dissemination due to high licensing costs and restrictive conditions. The comparative analysis of jurisdictions such as India, China, Indonesia, Malaysia, Australia, Argentina, and Belgium illustrates that while all countries operate within a common international framework, their domestic approaches vary significantly. Countries with strong state capacity and investment in research and development, such as China, have successfully leveraged IP law to drive innovation. In contrast, developing nations often struggle to balance compliance with access, resulting in continued dependence on foreign technologies.

These findings suggest that the current intellectual property regime, while structurally coherent, is insufficiently responsive to global emergencies. Its rigidity, coupled with unequal technological capacities across countries, risks exacerbating existing inequalities rather than mitigating them. Accordingly, there is a pressing need to recalibrate the framework to better align with contemporary global challenges.

First, there must be a more effective utilization and expansion of TRIPS flexibilities. Provisions relating to compulsory licensing, government use, and public health safeguards should be simplified and made more accessible to developing countries. Procedural barriers and political constraints that discourage their use must be addressed through clearer international guidelines and institutional support.

Second, the global IP regime should incorporate emergency-specific mechanisms that can be activated during pandemics and environmental crises. Temporary waivers or expedited licensing systems should be institutionalized rather than negotiated on an ad hoc basis. This would ensure a more predictable and timely response to global emergencies, reducing delays in access to critical technologies.

Third, greater emphasis must be placed on technology transfer and capacity building. Developed countries and multinational corporations should be encouraged, and where necessary required, to facilitate the transfer of essential technologies to developing nations. This includes not only licensing arrangements but also the sharing of technical know-how and infrastructure development. Strengthening domestic innovation ecosystems in developing countries is essential to reducing long-term dependency.

Fourth, there is a need to reassess the impact of TRIPS-plus obligations, particularly in bilateral and regional trade agreements. Such provisions often impose higher standards of protection that restrict the policy space available to developing countries. A more balanced approach is required to ensure that international agreements do not undermine public interest safeguards.

Fifth, improved coordination between intellectual property law and other areas of international law, particularly public health and environmental law, is necessary. The current fragmentation of legal regimes limits the effectiveness of global governance. Integrating IP considerations with broader policy frameworks would enable a more holistic and coherent approach to addressing global challenges.

Finally, a shift in normative perspective is required. Intellectual property law must move beyond a purely property-based model toward a more balanced framework that recognizes its social function. The objective should not be the maximization of exclusive rights, but the optimization of innovation and access in a manner that serves collective global interests.

Thus, while intellectual property law remains a vital tool for promoting innovation, its future effectiveness depends on its ability to adapt to evolving global realities. A more flexible, equitable, and cooperative framework is essential to ensure that intellectual property serves not as a barrier, but as an enabler of solutions to the most pressing challenges of our time.

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