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EVOLUTION OF INTELLECTUAL PROPERTY RIGHTS: GLOBAL AND INDIAN PERSPECTIVES

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Abstract

This paper traces the historical evolution of intellectual property rights (IPR) from early national statutes to the contemporary global framework, and examines how India's IPR regime has evolved within that global context. It highlights key international treaties (Paris, Berne, WIPO treaties, TRIPS), landmark Indian legislation and amendments, important judicial developments (including compulsory licensing and patentability jurisprudence), and contemporary challenges arising from digital technologies, access to medicines, traditional knowledge, and genetic resources. The paper concludes with policy implications and suggestions for balancing innovation incentives with public interest in the 21st century.

1. Introduction

Intellectual property rights (IPR) are legal mechanisms that grant creators, inventors, and rights-holders exclusive rights over the use and commercial exploitation of intangible creations — inventions, literary and artistic works, trademarks, designs, plant varieties and more. Over roughly 150 years these protections evolved from scattered national laws into an extensive international architecture of treaties, organizations, and trade rules that both harmonize minimum standards and create tensions between developed and developing countries on issues such as public health, access to knowledge, and biodiversity. This paper maps that evolution globally and then focuses on how India adopted, adapted, and contested elements of the global regime. (Key international milestones and India's legislative path are described below.)

Historical evolution — global milestones

Early international frameworks (late 19th — mid 20th century)

Two late-19th century conventions were foundational. The **Paris Convention (1883)** structured protection for industrial property (patents, trademarks, industrial designs) and introduced national treatment and priority rights. The **Berne Convention (1886)** established international copyright norms for literary and artistic works and enshrined the principle of automatic protection without formalities. These multilateral instruments began the process of cross-border recognition of IP rights and set enduring principles still reflected in contemporary treaties.

Post-WTO era and TRIPS (1994)

The most disruptive step towards making IPR part of international trade law was the incorporation of the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** into the WTO framework in 1994. TRIPS imposes minimum standards across patent,

copyright, trademark, industrial design and trade secret regimes, while leaving some flexibilities (e.g., for public health). Its enforcement mechanisms (WTO dispute settlement) gave IPR new leverage in trade policy and made harmonization more legally consequential for member states.

WIPO and the digital age (1990s onwards)

The World Intellectual Property Organization (WIPO) — a UN specialized agency — led treaty responses to challenges from digital technologies. The **WIPO Copyright Treaty (WCT)** and the **WIPO Performances and Phonograms Treaty (WPPT)** (both concluded in 1996) updated copyright norms to address digital transmission, rights management, and technological protection measures. These instruments reflect the need to extend traditional copyright into the information age.

Recent developments: biodiversity, genetic resources and traditional knowledge

In the 21st century international attention has expanded to cover disclosure requirements, access and benefit-sharing for genetic resources, and the protection of traditional knowledge. Multilateral initiatives and recent UN/WIPO discussions have begun producing mechanisms to require transparency in patent applications about the origin of genetic resources — an acknowledgement of indigenous rights and biodiversity concerns under IP regimes.

Theoretical foundations and policy tensions

IPR rests on two competing rationales: (1) **incentive theory** — granting temporary exclusivity stimulates innovation and creative production by enabling cost recovery; (2) **natural rights / moral entitlement** — creators have rights in their creations. Policy tensions arise when exclusivity conflicts with public goods imperatives (access to medicines, education, and free expression), or when strong international harmonization restricts domestic policy space for pro-development exceptions. TRIPS attempted to balance these by allowing certain flexibilities, but the design and use of those flexibilities remains contested between high- and low-income countries.

Indian perspective — legislative and institutional evolution

Early history and legislation

India's modern IP framework emerged in the post-Independence era with statutes modelled on international templates. Key national laws include the **Indian Copyright Act (1957)**, the **Patents Act (1970)** (which originally reflected a more restrictive patent regime for pharmaceuticals), the **Trade Marks Act (1999)**, the **Geographical Indications of Goods (Registration and Protection) Act (1999)**, and subsequent amendments aligning domestic law with international obligations. The government established institutional structures such as the Office of the Controller General of Patents, Designs & Trade Marks to administer IP rights.

TRIPS compliance and the 1990s–2000s amendments

India amended its patent regime in phased steps (notably **amendments around 1999–2005**) to comply with TRIPS. A crucial change was the restoration of **product patents** across all fields (including pharmaceuticals) by the Patents (Amendment) Act, 2005 — reversing earlier exclusions and bringing India into TRIPS compliance while retaining certain safeguards (e.g., strict criteria for inventive step and Section 3(d) addressing mere new forms of known substances). These safeguards were designed to prevent "evergreening" of incremental pharmaceutical changes.

Landmark Indian cases and policy tests

Two Indian developments exemplify domestic tensions between exclusivity and public interest:

- **Natco v. Bayer (compulsory licence for Nexavar, 2012/2013):** India's first statutory compulsory licence was granted to Natco for Bayer's patented cancer drug Nexavar on grounds of

affordability and inadequate working of the patent in India. This exercise of TRIPS-permitted flexibilities signalled India's willingness to authorize generic production in the public interest.

- **Novartis AG v. Union of India (2013):** The Supreme Court rejected Novartis's patent claim on the beta-crystalline form of imatinib (Glivec), interpreting Section 3(d) strictly and thereby narrowing the scope for patents on incremental modifications without enhanced therapeutic efficacy. The judgment affirmed India's approach to preventing trivial pharmaceutical patenting while remaining TRIPS-compliant.

These decisions have had global resonance, affecting international debates on access to medicines and patentability thresholds.

Contemporary challenges and issues

Digital technologies, copyright enforcement, and user rights

The digital environment strains classic copyright doctrines: ease of copying and global distribution increases infringement risks, while automated technological protection measures and rights management systems can limit legitimate uses (e.g., education, fair dealing). India has had to adapt enforcement mechanisms and intermediary liability regimes while balancing free expression and innovation. WIPO's internet treaties and national implementations shape these changes.

Access to medicines and public health

India's generic pharmaceutical capacity and its use of TRIPS flexibilities (compulsory licensing, strict patentability standards) make it central to global access to affordable medicines debates. The Natco decision and Novartis judgment illustrate India's balancing act between rewarding innovation and protecting public health. These dynamics also influence global supply chains for essential medicines, especially in pandemics or public health emergencies.

Traditional knowledge, biopiracy and genetic resources

There is rising international focus on preventing misappropriation of traditional knowledge and ensuring equitable benefit-sharing for genetic resources. New treaty discussions and domestic disclosure requirements for patent applications aim to increase transparency about the origin of biological materials and associated indigenous knowledge. Such measures intersect with India's rich traditional medicine systems (e.g., Ayurveda) and raise questions about community rights and documentation databases.

Enforcement, litigation costs, and institutional capacity

Harmonization raises enforcement expectations. Developing countries frequently face capacity constraints in administrative examination, border enforcement, and judicial adjudication. India has invested in institutional strengthening but continues to face challenges such as pendency, examination backlogs, and balancing rights enforcement with preventing abuse (e.g., frivolous trademark suits or patent assertions that stifle competition).

Comparative observations: Global vs Indian routes

1. **Convergence with divergence:** India's legal framework has converged with global standards (TRIPS compliance) while preserving certain distinctive policy choices (e.g., Section 3(d) patentability standard, use of compulsory licenses). This hybrid approach reflects domestic priorities (public health, rural development, traditional knowledge) within a globalized IP order.
2. **Development orientation:** Unlike many developed countries that prioritized stronger IP protections early, India's prior emphasis on process patents and later selective strengthening demonstrates a

development-oriented trajectory — allowing local industry growth (notably generics) before full product-patent protection.

3. **Judicial role:** Courts in India have played a critical gatekeeping role (e.g., Novartis) in interpreting statutory safeguards and shaping the balance between innovation incentives and socio-economic rights.

Policy implications and recommendation

1. **Maintain calibrated patentability standards:** Retain rigorous inventive step and anti-evergreening criteria (e.g., Section 3(d)) to ensure patents reward genuine innovation and not trivial modifications.
2. **Strengthen enforcement capacity with safeguards:** Invest in examiners, digital enforcement tools, and judicial training — while ensuring fair procedure to avoid misuse of IP litigation.
3. **Use TRIPS flexibilities proactively:** Continue to preserve and judiciously use compulsory licensing, parallel import policies, and research exceptions for public health and developmental aims.
4. **Protect traditional knowledge and ensure benefit sharing:** Develop legally robust systems for documentation, prior informed consent, and benefit-sharing mechanisms in line with international developments on genetic resources.
5. **Adapt copyright to digital realities:** Craft balanced exceptions for education and research, refine intermediary liability rules, and ensure that technological protection measures don't override user rights.
6. **Facilitate innovation ecosystems:** Use IP strategically to foster local innovation — through support for SMEs, technology transfer incentives, and public-private research collaborations.

Conclusion

The evolution of IPR has been a movement from national protections to an elaborate international architecture that both harmonizes rights and intensifies policy trade-offs. India's experience — charting a path of selective convergence with global norms while protecting public interest imperatives — illustrates how middle-income countries can preserve policy space even while participating in global trade and treaty regimes. The digital revolution, global health needs, and biodiversity imperatives ensure that IPR will remain a live field of legal reform, judicial contestation, and public policy balancing for the foreseeable future.

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