

FROM TRADE DISCIPLINE TO DEVELOPMENT JUSTICE: REINTERPRETING TRIPS THROUGH CONSTITUTIONAL MORALITY AND PUBLIC WELFARE IN INDIA AND THE GLOBAL SOUTH

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Abstract

In the initial briefing session of TRIPS, the background of the talks came to the fore as a turning point in world history, the phase of much trade liberalisation and convergence of regulations. The ultimate aim was to put in place minimum intellectual property norms as provided by the WTO framework, thus making the protection of intellectual property rights more predictable.

The clash between trade governance and socio-economic justice has emerged as notable among the views of the Global South. This paper argues that TRIPS cannot be merely viewed from a trade-based perspective; rather, it needs to be viewed through the principle of constitutional morality and social good, especially in transformational constitutional democracies like India.

Through our examination of the Indian constitutional system, we argue the understanding and implementation of the TRIPS obligations can rightfully be informed by the promises of equality, dignity, public health and distributive justice. Issues of strict patentability, compulsory licensing and court rulings bring intellectual property as an extension of wider societal purposes. We demonstrate that TRIPS flexibilities are not isolated cases, but essential parts of its internal compromises. This paper suggests that there needs to be a

conceptual representation of a new model of international governance of IP based on development justice.

The Global South experience demonstrates that adherence to international trade rules may not always undermine the social welfare objectives; instead, it can work together with them by offering contextual readings and situational implementation.

Finally, we argue that the future of the TRIPS regime will depend on the alignment of the regime with the constitutional and developmental priorities. Reconstruction of TRIPS with constitutional morality provides a way to have a balanced and inclusive IP order, balancing trade commitments with the larger aims of justice and human development of the Global South.

Keywords: *TRIPS, Constitutional Morality, Development Justice, Public Welfare, India and Intellectual Property.*

I. Introduction

The introduction of intellectual property into the multilateral trading system by the World Trade Organisation (*hereinafter*, WTO) in 1995.¹ was a radical alteration of the structure of the operation of global economic governance. The Agreement on Trade-Related Aspects of Intellectual Property Rights (*hereinafter*, TRIPS) was not the harmonisation of standards; it recreated intellectual property as an object of enforceable trade discipline.² The unprecedented case regarding intellectual property is the least adherence to minimum standards, which might provoke retaliatory trade measures in the WTO dispute-settlement mechanism.³

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

² *Ibid*

³ Marrakesh Agreement Establishing the World Trade Organization arts. 22–23, Apr. 15, 1994, 1867 U.N.T.S. 154.

Intellectual property transferred to the comparatively adaptive and development-sensitive regime of the World Intellectual Property Organisation (*hereinafter*, WIPO) into the stiff-edged enforcement platform of the trade law.⁴

The concept of Intellectual property rights originated from the increasing acts of duplicity, piracy, of the formulas, designs, models, circuits, products, which were in demand in the market, thereby virtually reducing the actual profits of the real owner, that too without paying the taxes to the government of the day.⁵ The problem aggravated to the extent of closing down of many industries, due to this piracy, the sub-standard, low quality cheap products which were supplied to the customers which even resulted in the casualties, specially in the field of medicines and pharmaceuticals, machines and motors, art and music, and many other consumer goods.⁶

This change in institutions was related to the geopolitical reality of the late twentieth century. The economies that had been industrialised especially with strong pharmaceutical, entertainment, biotechnology and software industries wanted a greater protection of intangible resources across borders.⁷ The outcome was a treaty form that favoured intellectual property as not being a super modality of domestic industrial policy but as a means of predictability to markets in the world.⁸ Trade discipline was an animated element and the TRIPS in design and enforcement.

⁴ Convention Establishing the World Intellectual Property Organization, July 14, 1967, 828 U.N.T.S. 3.

⁵ Peter Drahos & John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* 36–40 (2002).

⁶ Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* 1–10 (2003).

⁷ Carlos M. Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* 3–7 (2d ed. 2007).

⁸ Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* 15–22 (5th ed. 2022).

The Global South was one of the main victims of the Intellectual property regime, and patent and geographic indications (*hereinafter*, G.I) tagging, as most of the ideas and inventions came from the Western industrially developed countries.⁹ As these countries had the essential infrastructural facilities, for all sorts of new inventions and discoveries in all the fields of the human life. Whereas on the other hand the Afro-Asian region, mostly comprised of developing, and under-developed nations, had virtually no, or nominal facilities, for any Research and development (*hereinafter*, R&D), which in other words also means, that the Afro-Asian countries were totally dependent on the western countries. For the latest developments, and inventions, in every field, and whatever technology these countries received from the western countries that was in fact outdated or expired, which was not in use for the western countries, that only Afro-Asian countries are still receiving.¹⁰

The dependence of the Afro-Asian region, clearly indicates the monopoly and dictating, or arms twisting nature of western countries, which are not even determining what kind of technology is given to these countries, whether it suits to these countries, according to their climatic conditions, and in other words these countries have become the dumping ground for western countries. For example, the Bhopal gas tragedy in India in 1984 which killed thousands of innocent people, still now, many are still suffering from various diseases specially physical and mental deformities, is the glaring example of the attitude of west towards other countries, as the Union Carbide could not produce the dangerous M.I.C. gas in America, but could easily, do so in India, while remaining unchecked also.¹¹

⁹ Ruth L. Okediji, *The International Relations of Intellectual Property*, 7 Santa Clara J. Int'l L. 1, 5–10 (2008).

¹⁰ Thomas Pogge, *World Poverty and Human Rights* 13–20 (2d ed. 2008).

¹¹ See generally, Upendra Baxi, *The Bhopal Case: The Supreme Court and the Future of Constitutionalism*, 1 Indian J. Const. L. 1 (1987).

However, this situation has changed drastically within 30 years, where the normative environment in which the TRIPS actions operate has shifted significantly. IPR is now at the heart of worldwide discussion of access to vaccines¹², technology transfer in the climate sector,¹³ digital monopolies, agricultural resilience and governing artificial intelligence.¹⁴ On a broader level, third world nations or the Global South, regulation of IP directly influences the affordability of drugs, access to learning resources as well as the ability to enjoy sustainable industrialisation.

The COVID race revealed the system inherent inequality in the pharmaceutical production and distribution patterns of the world.¹⁵ The current climate change has highlighted the need of paying serious attention to affordable access to renewable-energy technologies.¹⁶ The digital revolution has centralized information and algorithmic power to a few corporate participants, who are based largely in the Global North.

The key question in this altered scenery is - can a trade-based intellectual property regime respond well to the constitutional and developmental agendas of the Global South?¹⁷ We underline that the legitimacy and future sustainability of TRIPS rely on normative reorientation, and it should no longer be trade discipline but rather development justice.

Instead of viewing the barriers to the spread of public health, exceptions to education, compulsory licensing, and transfer of technologies as the subtractive

¹² Frederick M. Abbott, The Doha Declaration on the TRIPS Agreement and Public Health, 99 Am. J. Int'l L. 317 (2005).

¹³ UNCTAD-ICTSD, *Resource Book on TRIPS and Development* 720–25 (2005).

¹⁴ Chidi Oguamanam, Intellectual Property in Global Governance, 10 J. World Intell. Prop. 293, 300–05 (2007).

¹⁵ World Health Organization, COVID-19 and Access to Medicines (2021).

¹⁶ U.N. General Assembly, Transforming Our World: The 2030 Agenda for Sustainable Development, G.A. Res. 70/1 (2015).

¹⁷ Amartya Sen, *Development as Freedom* 3–11 (1999).

variations of a protectionist norm, one has to perceive them as the part of the internal equilibrium of the agreement.¹⁸ TRIPS is not an enforcement tool on its own but within the text, the principles of social welfare, technological diffusion, and public-interest regulation were identified. The interpretive practice of the past thirty years has however tended to be less equitable.¹⁹

This imbalance is felt in the Global South most of all. Various developing states joined the TRIPS regime, having low technological levels, weak national-health infrastructures, and development needs which demanded regulatory flexibility.²⁰ To such countries, intellectual property is not an imaginary commercial right. It is a structural variable that determines the reduction of poverty within society, as well as industrial policy, agricultural security, and constitutional rights. When the patent protection costs drugs more than the public-health programmes can afford, both the strain does not simply lie beyond the economic domain, but rather it is a constitutional one.²¹ The effect of limiting access to education in low-income societies by the regimes of the copyright is not just on the trade, but on equality and social mobility.

Such tension is specifically evident in transformative constitutional democracies. An example is that the Constitution of India does not envisage the state as a referee of an abstract market.²² It sees a social republic dedicated and devoted to justice- social, economic and political. Basic liberties of equality and life are at variance with authoritative principles ensuring societal health, equitable housing of material resources, and safety of vulnerable communities.

¹⁸ TRIPS Agreement, *supra* note 1, art. 31.

¹⁹ Gautam Bhatia, *The Transformative Constitution* 45–60 (2019).

²⁰ Carlos M. Correa, *Intellectual Property and Public Health in Developing Countries* 25–30 (2000).

²¹ Ellen F. M. 't Hoen, *The Global Politics of Pharmaceutical Monopoly Power* 40–55 (2009).

²² Constitution of India, Preamble and Articles 14, 21, and 38.

Intellectual property in such a constitutional order can never be an absolute right that lacks societal implication. It should be in the context of social good. India's experience since 1995 demonstrates that compliance with TRIPS need not entail abandonment of developmental priorities.²³ Through calibrated legislative amendments, strict patentability standards, and carefully structured compulsory licensing provisions India has constructed an intellectual property regime that remains formally TRIPS-compliant while safeguarding access to essential goods.²⁴ The jurisprudence of the Supreme Court of India in *Novartis* case has reinforced this balance, interpreting statutory provisions in light of constitutional commitments to health and equity. The result is neither protectionist isolation nor passive conformity. It is strategic constitutional engagement.²⁵

The broader Global South exhibits similar patterns of calibrated resistance and adaptation. Countries across Africa, Latin America, and Asia have invoked TRIPS flexibilities to secure affordable medicines and protect local agricultural systems. Multilateral debates surrounding public health emergencies and climate technologies have further exposed the asymmetry between formal equality in treaty obligations and substantive inequality in technological capacity. These developments have generated a growing scholarly consensus that intellectual property governance must be evaluated not solely through the lens of trade efficiency but through the prism of distributive and developmental justice.

This paper contributes to that evolving discourse by advancing a structured theory of development justice as an interpretive framework for TRIPS. Development justice, as conceptualised here, rests on five interrelated pillars.²⁶ Corrective justice addressing historical technological asymmetry; distributive justice

²³ Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 14, 2001).

²⁴ *Bayer Corp. v. Natco Pharma Ltd.*, Compulsory License Order No. 1 of 2012.

²⁵ *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1

²⁶ Martha C. Nussbaum, *Creating Capabilities* 18–25 (2011).

ensuring equitable access to essential goods; procedural justice enhancing democratic participation in global rulemaking; intergenerational justice aligning IP governance with sustainability; and sovereign justice preserving regulatory autonomy within multilateral commitments. Together, these dimensions offer a normative lens through which TRIPS can be reinterpreted without dismantling the multilateral trading system.²⁷

The argument is not for withdrawal from the global trade architecture. Nor is it for the erosion of intellectual property protection as such. Innovation incentives remain vital to scientific advancement and economic growth. Rather, the claim is that intellectual property law must remain anchored to its social function. Exclusive rights are instruments, not ends in themselves. When they undermine constitutional commitments to dignity, equality, and public welfare, interpretive recalibration becomes both legally defensible and morally necessary.

Our study proceeds in nine parts. Part I is the introduction. Part II examines the historical political economy of TRIPS, situating it within the broader phenomenon of trade constitutionalism. Part III explores constitutional morality in transformative democracies, with particular attention to India's constitutional jurisprudence. Part IV develops the theoretical framework of development justice. Part V analyses India's legislative and judicial strategies in operationalising TRIPS flexibilities. Part VI expands the inquiry beyond pharmaceuticals to agriculture, education, climate technology, and digital governance. Part VII engages interpretive methodology under the Vienna Convention on the Law of Treaties, arguing for purposive and systemic integration approaches²⁸. Part VIII outlines policy pathways for a development-oriented global IP order. Part IX concludes by proposing a reconceptualisation of

²⁷ For a summary of these five pillars, please see, The Asia Pacific Forum on Women, Law and Development, available at, <https://apwld.org/wp-content/uploads/2014/06/five-pillars-onepage2015-novc.pdf>, last visited, 16th April 2026

²⁸ Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331.

TRIPS legitimacy grounded in constitutional morality and Global South solidarity.

Three decades after its adoption, TRIPS stands at a crossroads. It can remain a regime defined primarily by enforcement metrics and commercial predictability, or it can evolve into a framework that reconciles innovation with human development. The Global South does not seek exemption from global rules. It seeks equilibrium within them. Reinterpreting TRIPS through development justice offers a pathway toward that equilibrium, in which intellectual property serves not only markets, but societies.

TRIPS as Trade Constitutionalism: Historical Political Economy and Structural Asymmetry

A. From Diplomatic Coordination to Enforceable Trade Obligation

Until the year 1995, the intellectual property management across the world had been relying mainly on the Paris and the Berne Conventions.²⁹ These have been operating under the supervision of the World Intellectual Property Organisation.³⁰ Those conventions incorporated some of the most important principles: national treatment, priority rights and minimum protection, but they did not do much to establish effective enforcement repositories. The adherence was highly dependent on the diplomatic interaction and not on the involuntary economic attempts. Based on this, the developing countries were free to have a great policy space to integrate intellectual property systems in line with local industrial policies.

²⁹ Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as revised July 14, 1967, 21 U.S.T. 1583; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised July 24, 1971, 828 U.N.T.S. 221.

³⁰ Convention Establishing the World Intellectual Property Organization, July 14, 1967, 828 U.N.T.S. 3.

The revolution came around the Uruguay Round of multilateral trading negotiations (1986-1994).³¹ The industrialised countries especially the United States, the European communities and Japan, were agitating to adopt high standards of intellectual property in the new world trade order under the WTO. Intellectual property was redefined as a trade-based problem which had to be justified by the fact that protection of intellectual property was bad and thus it skewed the international trade.³² By entrenching the IP obligations into the WTO, negotiation decision makers tied the intellectual property compliance to the dispute settlement system, which is supported by the threat of trade retaliation.³³

Such relocation of an institution changed the normative nature of the international law on IP. Intellectual property ceased to be an issue chiefly of creative incentive or technological diffusion, but it became part of the world trade discipline. TRIPS, therefore, is a kind of so-called trade constitutionalism as developed by scholars: a system where economic standards gain some quasi-constitutional status by having a dispute resolution and enforcement mechanism.³⁴

In TRIPS, member States must implement minimum levels of protection in relation to the patents, copyright, trademarks, industrial designs, geographical indications and enforcement. They can be enforced by use of the WTO dispute settlement mechanism. The non-compliance can cause approved countermeasures, such as trade sanctions. The disadvantage between the economic strength of both the developed and developing countries harms the practical application of this implementation framework.

B. Minimum Standards and Regulatory Convergence

³¹ Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* 3–10 (5th ed. 2022).

³² Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* 96–120 (2003).

³³ Marrakesh Agreement Establishing the World Trade Organization arts. 22–23, Apr. 15, 1994, 1867 U.N.T.S. 154.

³⁴ Deborah Z. Cass, *The Constitutionalization of the World Trade Organization* 32–40 (2005).

TRIPS balances substantive standards like never before in the past agreements of IP. The term of protection of patents should not be less than twenty years after the application date.³⁵ Protection of copyright normally extends to the period of life plus fifty years of the author.³⁶ The enforcement measures include civil compensations, prison, and border controls of violating goods.

There are three structural features of this architecture:

1. **Harmonisation of Minimum Standards.** States can offer levels of protection which exceed those required by TRIPS, but not less, which puts an upward convergence pressure.
2. **Equal Protection of Applied Technologies.** Violation should be patented on any inventions be it product or the process in any technology sector subject to a few exceptions.
3. **Integrated Enforcement** Adjudication of compliance disputes is done in the framework of WTO, as opposed to the diplomatic or WIPO centred mechanisms.

The sum total of this is regulatory compression. The developing nations who had historically depended on differentiated IP regimes especially in pharmaceutical and the agricultural sector had to reorganize domestic law within a defined period.

The experience of India depicts this change very clearly. Before adhering to the TRIPS, the Patents Act 1970 of India did not cover product patent in pharmaceuticals and agrochemicals.³⁷ This policy made possible the development of a strong generic pharmaceutical industry in the country. After the WTO accession and during the transitional period, India in 2005 amended its legislation

³⁵ TRIPS Agreement, supra note 1, art. 33.

³⁶ TRIPS Agreement, supra note 1, art. 12.

³⁷ The Patents Act, No. 39 of 1970

to have pharmaceutical product patents, which has put it in line with the TRIPS requirements.³⁸

It was not a technical change as well. It rebalanced the process between the strategy of industrial development and commitment to international trade.

C. Structural Asymmetry and Technological Hierarchy

The formal equality that exists in TRIPS between all members of the WTO does not translate to substance equality. The world innovation image is highly skewed. Developed economies have established research systems, capitalistic pharmaceutical sectors, well-developed digital systems, and bunched holdings of premium patents. Most of the developing nations, on the other hand, are largely technology importers.

Distributive effects are brought by the introduction of uniform minimum standards into an unequal technological environment. Increasing in the bargaining power of rights owners, who are usually based in developed economies, and royalty flows and licensing arrangements can consolidate existing technological pecking orders.

This imbalance was especially seen in times of international epidemiological outbreaks. Licensing rulings by multinational companies were usually across the line of access to patented medicines, vaccines and other therapeutic technologies. The contribution of temporary waivers to IP order loopholes, especially in the context of the COVID-19 pandemic, has demonstrated how the Global South states have seemingly split the globe between those that believe there should be greater flexibility in managing the case of a general health crisis, and those that believe it challenges the very basis of international law.³⁹

³⁸ The Patents (Amendment) Act, 2005 (India).

³⁹ World Health Organization, COVID-19 and Access to Medicines (2021).

The stress does not only exist in pharmaceuticals. In climate technology, patenting of renewable energy is overrepresented in the developed world. The North American and European firms take control of platform economies and algorithmic infrastructures in the domain of digital innovation. Standardized IP in those situations can become a source of technological addiction without significant transfer of technology and capacity development.

D. Articles 7 and 8: The Internal Normative Counterbalance

Despite its orientation on enforcement, TRIPS has a normative language in it that moderates an all commercial interpretation. According to article 7, the protection of intellectual property is meant to serve technological innovations and transfer and diffuse technological progress, to a mutual benefit of producers and users, and in such a way, as to promote social and economic wellbeing.⁴⁰ Article 8 acknowledges that members have the right to implement the measures needed to ensure the safety of societal health as well as nutrition and the advancement of societal interest in areas of essential significance.⁴¹ These clauses indicate that TRIPS was not supposed to be a strictly absolutist regime of protection. It builds in a balance between the right of privacy and the right of society. Practically though, enforcement narratives have been able to cast in the shade of such balancing clauses.

The problem of interpretation is to distinguish between whether Articles 7 & 8 are active principles or mere target-language words.⁴² When read in a purposively intended way, they base substantive provisions in textual grounding of the development-oriented reading approach. When marginalised, they downgrade the considerations in the public welfare to minor exceptions.

⁴⁰ TRIPS Agreement art. 7.

⁴¹ TRIPS Agreement art. 8.

⁴² TRIPS Agreement, *supra* note 1, arts. 7–8.

E. The Doha Declaration and Emerging Development Consciousness

These developments culminated in the introduction of the initial normative change in the regime in the year 2001 with the adoption of the Doha Declaration on the TRIPS Agreement and Public Health.⁴³ The declaration confirmed that TRIPS was able and ought to be interpreted and applied in a way that supported the right of the WTO members to safeguard the health of the people. Though TRIPS was not updated under Doha Declaration, the interpretation priorities were made clear and the legitimacy of compulsory licensing and parallel importation as the ways to protect the public health were strengthened. This is a move towards a new awareness in multilateral system that strict enforcement can destroy wider legitimacy. Nevertheless, the later bilateral and regional trade agreements have tended to present so-called TRIPS-Plus norms that surpass multilateral expectations, which reduces policy room in the developing nations. The presence of multilateral flexibility alongside bilateral pressure portrays the rough landscape in the global IP regulation.

F. Trade Constitutionalism and Democratic Deficit

The penetration of the intellectual property into the framework of the WTO as well present democratic legitimacy issues. WTO dispute settlement panel adjudicates on complicated regulation matters which have a deep domestic social implications. Affected populations especially in third world countries have little input to such processes.

Where IP lawsuits involve access to life and sustenance medicines, or agricultural communities and sustainability, the interest of the case goes beyond a commercial concern. They overlap with basic rights and government policy decisions historically preserved to the domestic democratic agencies. Trade

⁴³ Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 14, 2001).

constitutionalism overcomes a paradox then. On the one hand, it fosters predictability of global commerce through the rule. At the opposite end, it could limit domestic regulatory independence in the field that is closely related to the social welfare.

In the case of Global South states, this is a burning tension. They are being compelled to balance international trade and the constitutional commitments towards equality, health, and development.

Constitutional Morality and Transformative Constitutionalism in the Global South

A. Transformative Constitutionalism in the Global South

The intellectual insight of this paper has been based on a very fundamental realization: the constitution of democracies in the Global South in most cases is not a structural document defining the government in its various powers. It is transformative. It aims to break the historical injustice, lessen the socio-economic disparity and reorganize the social hierarchies. Such contexts do not see law being normatively neutral, but purposive. This is the case with India with respect to its constitutional example. The Constitution of India⁴⁴ does not envisage minimal state that will ensure that property is protected and that contracts are enforced. Its Preamble enshrines justice to the Republic social, economic, political. The basic rights defend dignity, liberty and equality. Directive Principles of State Policy enable the promotion of the health of the population, equal allocation of material resources, and defense of weaker layers.

It was the transformative orientation that has been instrumental in constitutional jurisprudence throughout a period of seven decades. The Supreme Court of India has on the occasion increased the coverage of Article 21 (right to life and personal

⁴⁴ Constitution of India, Preamble and Articles 14, 21, 38, 39(b), 47.

liberty) to incorporate the right to health, livelihood, education, and environmental protection.⁴⁵ By so doing, it has underlined the fact that governing such a constitution through constitutional means should give precedence to substantive justice and not formal legality. The intellectual property law, placed in such a constitutional setting, cannot be seen as a commercial right per se. It has to act in line with the constitutional values. Constitutional morality is interpretively final where there is tension between exclusive rights and the common good.

B. Defining Constitutional Morality

Constitutional morality has developed in Indian jurisprudence, as a policy that involves a state intervention and judiciary should relate to the more foundational values of the Constitution and not the text alone. The Supreme Court has generalized constitutional morality to prohibit state action which, in form, is within constitutional authority, but under the guise of constitutional intent. Fidelity to all that is required by constitutional morality. These are human dignity, elimination of discrimination based on gender, race, and legitimacy, social justice, rule of law and democratic accountability.⁴⁶

In relation to the regulatory areas, constitutional morality stipulates that statutory constructions must be construed to be consistent with these tenets. When applied to intellectual property it implies that exclusive rights should be interpreted to avoid reducing access to necessary goods, promote disparities, or be counterproductive to the health of the population. The Constitution does not abandon the property rights, actually, it makes them a subset of a social contract.

C. Intellectual Property and the Right to Health

⁴⁵ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.

⁴⁶ See generally, Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, *European Journal of International Law*, Volume 19, Issue 4, September 2008, Pages 655–724.

The most conspicuous point on the cross over between constitutional morality and TRIPS requirements is in the pharmaceutical industry. Pharmaceutical patenting has a direct proportional impact on the price of drugs and their supply. There is no way that in the country where the income inequality is high and people experience many health problems, the opportunity to receive affordable medicines cannot be separated with the constitutional right to live.

The Supreme Court has always believed that the right to life in Article 21 entails access to healthcare. This commitment in its constitution defined the Indian legislation in response to TRIPS compliance. Indian Patent Act was amended in 2005, which brought pharmaceutical product patents but with strict measures kept to curb the abuse. Under section 3(d) of Patents Act, the new forms of known substances cannot be patented unless they exhibit increased therapeutic effect.⁴⁷ In the landmark case of *Novartis AG v. Union of India*, this was put into question and the Supreme Court answered very well in 2013.⁴⁸ That being the case, the Court considered the constitutionality and validity of Section 3(d), stating that the patent law should balance the rewarding of innovation and access of the population to the medicines. The ruling strengthened the notion that inconsequential amendments that are designed to prolong the duration of monopoly (so-called evergreening) would not be safeguarded unless real progress in therapy was achieved.

The case is of importance not only in its reasoning which is doctrinally grounded but also its constitutional spirit. The Court also did not look at the compliance with the TRIPS as something that has to be interpreted to the maximum. Rather, it confirmed that national laws are allowed to incorporate more stringent patentability requirements in the allowable confines of TRIPS due to the need to

⁴⁷ The Patents Act, 1970, § 3(d) (India).

⁴⁸ *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1.

ensure national health security. Such a practice of India's apex court describes development justice.

D. Compulsory Licensing and Public Interest

The mandatory licensing system in India can be considered a fair example of constitutional congruence. Section 84 of the Patents Act provides that compulsory licensing can be granted in an instance where there is no fulfilment of reasonable needs of the general population, the patented invention is not available at a fee that they can reasonably afford and also where the invention is not exercised in the country.⁴⁹ India issued its first post-TRIPS compulsory license in 2012, to Natco Pharma of the cancer drug *Sorafenib Tosylate* that was patented by multinational giant Bayer.⁵⁰ The decision, which was affirmed on appeal, drastically reduced the cost of the drug thus, increasing access to a life-saving treatment. The move was well supported under Article 31 of TRIPS which permits the compulsory licensing under certain circumstances, but at the same time represented the constitutional beliefs of health and distributive justice.⁵¹

Importantly, India has not applied the concept of compulsory licensing as an arbiter or contrary to what UN mandates. It was following the law, calculated the cost-effectiveness, and paid royalties to the patent holder. The action was legally justifiable in the framework of TRIPS.

The episode shows that constitutional morality and international compliance do not necessarily have an antagonistic relationship. The development goals can be reconciled with multilateral commitments through careful packaging of the statute and the ability to uphold the commitments through a combination of moral

⁴⁹ The Patents Act, 1970, § 84 (India).

⁵⁰ Bayer Corp. v. Natco Pharma Ltd., Compulsory License (2012).

⁵¹ TRIPS Agreement art. 31

principles and well-designed statutes designed to establish the goals applicable in convergence with multilateral concession.

E. Equality and Access to Knowledge

Outside drugs, intellectual property comes in conflict with the constitutional right to equality and to education. Strict understanding of copyright protection can lead to poor accessibility of cheap educational resources. The Indian copyright law has a provision of exceptions on educational use, library reproduction, and research. *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, the Delhi High Court, confirmed the legality of course packs as put together with an educational intent in reference to the previous use of copyright law, held that the law has to be examined in terms of communal interest and access to resources.⁵² This argument is reflective of a constitutional ethos specifically, they have the right to intellectual property to encourage creativity and dissemination, not to inhibit knowledge in low-income settings.

F. Directive Principles and Socio-Economic Orientation

Although the non-justiciable Directive Principles of State Policy influence legislation interpretation and policy-making. The strategy of the state in regard to IP governance is based on articles that propagate public health, equal material resources distribution and safeguard agriculture. As an example, India has a sui generis system of protecting plant variety, which is the Protection of Plant Varieties and Farmers right Act, but not the breeder-centric system.⁵³ This system rewards innovation incentives as well as the traditional inputs of the farmers. The economic development and social justice is therefore incorporated in the

⁵² *Chancellor, Masters & Scholars of Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 6229.

⁵³ Protection of Plant Varieties and Farmers' Rights Act, 2001 (India).

constitutional structure. One tool of this overall socioeconomic architecture is in the intellectual property regulation.

G. Constitutional Morality as Interpretive Methodology

If TRIPS obligations are exhibited to limit domestic welfare policies, what do the courts and policymakers do? The solution is harmonisation as opposed to confrontation. The moral of the constitution is not the violation of the treaty. Rather, it demands that treaties are made such that they can be interpreted along the same lines as in terms of constitutional values wherever it is open to the text.

The existence of such an interpretation is supported by international law. General principles applied to the interpretation of agreements state that they must be read considering their object and purpose.⁵⁴ Articles 7 and 8 of TRIPS strongly allude to social and economic welfare and the common good. These are provisions of interpretative latitude. In that way, constitutional morality is not the rejection of the TRIPS; it is the way its provisions are put in effect, which is legitimate at home.

H. India as Normative Model, Not Exception

The direction taken by India cannot be interpreted as an idiosyncratic resistance. It follows a more general trend among the Global South states that are in search of a balance between innovation and equity. The reason behind this is that the constitutional philosophy, legislative design and judicial interpretation are coherent in India. This integrity facilitates legitimacy. It goes to show that development-oriented IP governance may still be rule-based and in compliance with international standards. India is therefore model diplomatically persuasive. It does not oppose international trade or give in to maximalist demands. It shows

⁵⁴ Vienna Convention on the Law of Treaties art. 31, May 23, 1969.

that constitutional morality can be used to investigate multilateral engagement positively.

Development Justice: A Normative Framework for Reconstructing Global Intellectual Property Governance

A. Why a New Framework Is Necessary

It has been a common cliché of the TRIPS debate to provide strong protection or weak protection, innovation or access, compliance or flexibility. These kinds of binaries make the structural problem more obscured. It is not whether intellectual property ought to exist and whether developing countries ought to obey treaty commitments. The rhetoric is whether the intellectual property regulation in the world is appropriate in terms of its ability to uphold the concept of justice in a world of extreme technological inequality.

The Lockean theory of labour, the utilitarian theory of incentives, and the personality theory as the traditional arguments behind intellectual property, centred around the rights of creators and inventors.⁵⁵ These models developed in situations when the technological production was mostly domestic and the economic asymmetry between states was of lesser aspect. Presently, in a globalised knowledge economy who are typified by a concentration in the ownership of high-value patents and structural differences in the ability to innovate, these classical theories need to be recalibrated. As a reaction to this rebalancing, development justice burns forth. It acknowledges the fact that intellectual property rights work or exist within the global system of power and that distributive effects of intellectual property policies can not be overlooked. It is not opposed to innovations incentives. Rather it demands that these incentives

⁵⁵ John Locke, *Second Treatise of Government* (1690); Jeremy Bentham, *A Manual of Political Economy* (1843); G.W.F. Hegel, *Philosophy of Right* (1821).

should be combined with fair access, capacity building of technologies, and sustainable development.

Development justice thus reevaluates TRIPS as a rigid implementation agreement but as a flexible tool that is involved in the larger developmental obligations.

B. The Five Pillars of Development Justice in India and TRIPS

We define development justice in five dimensions interrelated with each other namely corrective justice, distributive justice, procedural justice, intergenerational justice, and sovereign justice. These dimensions taken together offer a systematic approach towards analysing the implementation of TRIPS.

1. Corrective Justice: Addressing Historical Technological Asymmetry

The modern world IP regime did not come out of thin air. It was formed in centuries of industrialisation that was concentrated in Europe and North America with the help of colonial extraction, unequal trade relations and asymmetric accumulation of capital. A great number of states of the Global South were not equipped to conduct research and research in the post-colonial period, as the level of technological infrastructure was lower.

Equal minimum standards that have been placed on the states that are unequal technology wise stand a chance of trapping them into a state of dependency. These historical asymmetries must be taken note of in correcting justice. It does not require compensation ex-post. Instead, it legitimises regulatory space which facilitates late industrialisation.

The technology transfer itself is recognized in TRIPS in Article 7 where the focus is put on the spread of technology to benefit both sides. However, as a matter of fact, this mandate has often been realized in an inadequate way to give real transfer. With development justice, interpretive focus is emphasized to the capacity building of the domestic level. The local working conditions, the

mandatory licensing on specific requirements, and investigation exemption become the tools of corrective balance, but not it is a distortion of trade.

This is a dynamic admirable in India, through the direction of pharmaceuticals. In its pre-TRIPS compliance process-patent regime, the indigenous firms had the ability to develop manufacturing skill. Since the 2005 WTO accord, India has maintained protectionist policies in place including Section 3(d)⁵⁶ in order to discourage a wasteful continuation of patents and at the same time promote invention. This measured methodology represents a perfect instance of the application of corrective justice: attempting to be in tandem with the rest of the world without relinquishing the developmental goals.

2. Distributive Justice: Ensuring Equitable Access to Essential Goods

Intellectual property rights introduce legal exclusivity, which may lead to market upsurge. The distributive consequences of distributing life-saving medicines, agricultural seeds, educational materials, or renewable technologies are obvious and extensive when it comes to the subject matter.

In distributive justice, there should be no impact of IP protection in the reduction of access to fundamental goods. This is particularly evident in constitutional democracies whereby through right to life, health, and education has the normative force. Distributive correctives to the IP system include compulsory licensing systems, patentability criteria that inhibit evergreening and exceptions to copyright in education.

Notably, innovative justice is not creativity denied by distributive justice. It demands a condition of proportionality. The reward given to the innovators should be offset with the social price of outside. In situations where the issue of exclusion is a risk to basic well-being, recalibration can be determined as being

⁵⁶ The Patents Act, 1970, § 3(d) (India).

ethically sound. The Doha Declaration on TRIPS and Public Health supported this principle of distributive justice by reaffirming the right of the members to safeguard the health of the people.⁵⁷ Development justice places such statements in the centre of the regime and not on the fringes.

3. Procedural Justice: Democratizing Global Rulemaking

The TRIPS negotiations occurred on a geopolitical landscape where third-world countries were usually not comparatively powerful in a negotiation. Later, so-called TRIPS-Plus agreements have often been concluded in a bilateral form, which magnifies asymmetry.

The inclusion of all in the making of the rules and the transparency in the resolution of disputes are required in procedural justice. International intellectual property regulation should not be isolated of the democratic accountability. In the case of Global South states, it is more firm in its maintenance of a multilateral negotiation space in favour of maintaining structural fairness over time, as this will not be gradually pushed out through unequal bargaining positions. Procedural justice also requires participatory systems in IP administration in domestic systems. Such democratisation is characterised by the pre-grant and post-grant patent opposition in India. The patent applications may be contested by the civil society organizations and public health groups, which makes the audit reasonable and transparent. Development justice enhances legitimacy through the inclusion of participatory protection.

4. Intergenerational Justice: Sustainability and Climate Imperatives

⁵⁷ Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 14, 2001).

Climate crisis adds the time aspect to IP governance. Green technologies, climate-adaptation tools, and renewable energy are the resources also needed by the future generations and the current populations as well.

In case intellectual property regimes signal hindrance in the proliferation of clean technologies, the burden falls disproportionately on the developing countries whose share of historical emissions is minimal. The intergenerational justice thus requires that IP governance be geared towards the sustainability objectives. There are no such thing as optional mechanisms promoting technology transfer and deepening research collaboration and capacity building - they are ethically imperative. Development justice, in this regard, overlaps with commitments of global climate. Intellectual property cannot afford to go green.

5. Sovereign Justice: Preserving Regulatory Autonomy Within Multilateralism

The twenty-first century is neither a time nor a place where sovereignty reigns. States are volunteers who make treaty commitments at a time when they have the constitutional obligation to meet commitments.

Sovereign justice stipulates the fact that commitments at the multilateral level should not deny the domestic policy room needed in social welfare. TRIPS do not create maximal protection; it contains a minimum standard. Development justice focuses on the use of such interpretive flexibility. The bilateral trade negotiations between India and other countries regarding TRIPS-Plus resistance is an example of sovereign justice. India maintains constitutional balance by ensuring that it keeps its commitments under multilateral engagements, yet refuses to perform them in a manner that goes beyond the agreed. Sovereign justice therefore enhances the rule-based multilateralism but not sabotage it. It dictates that world integration should be accommodative of the localised democratic accountability.

C. Development Justice as Interpretive Method

Development justice is never an abstract philosophical concept but has the effect of being an interpretive approach when it comes to applying TRIPS commitments. According to the Vienna Convention on the Law of Treaties, treaties have to be interpreted in good faith, and in accordance with good faith with regard to the ordinary meaning of their terms, and in context, as well as in light of their object and purpose.⁵⁸ Social welfare goals are clearly stated in articles 7 and 8 of TRIPS and are therefore providing interpretative inspiration.

Development justice, in this way, corresponds to principles of interpretations of treaties in the existing principle. Neither does it presuppose textual distortion; it needs purposive reading. For example:

1. Requirements of patentability can be taken literally so that it can not be abused.
2. Compulsory licensing can be operationalised in case the need of the population is proved.
3. Copyright exceptions and restrictions can be interpreted in a manner that allows unrestricted access to education.

Such measures are still within the scope of TRIPS, but they are welfare-promoting.

D. India's Role in Operationalizing Development Justice

The experience of India gives a vivid example of the work of development justice:

1. There are high standards of patentability which stop trivial monopolies.
2. Mandatory licensing is still possible on certain terms.
3. The rights of farmers cannot be violated under plant-breeder protection.
4. Copyright exemptions favor education.

⁵⁸ Vienna Convention on the Law of Treaties art. 31, May 23, 1969. Article 31 is on interpretation of treaties.

This strategy has not driven India out of international trade; it is still a part of the WTO system with the protection of the people's welfare. The State of India is not an outlier, therefore but a laboratory in the development of conscious IP governance.

Development justice looks at TRIPS as the implementation-based regime as a unified tool of creativity and well-being. It puts a moral perspective of intellectual property, especially in the constitution and international fairness.

India's Strategic Compliance: Operationalising Development Justice Within TRIPS

The post-1995 intellectual property development in India is one of the more complex forms of moderated multilateral interaction of a Global South state. India integrated a model of alternative, constitutional-based, developed statutory draft, and careful statutory compliance as an alternative to rejection of TRIPS obligations and as an alternative to maximalist enforcement.

The principle of strategic compliance is based on three principles:

1. Full compliance with the TRIPS minimum standards; 2. Strict exploitation of interpretative flexibilities and 3. Contribution to the expansion of TRIPS.

This part investigates the way in which India realizes development justice using legislative framework, judicial rationale, and administrative procedures.

A. Section 3(d): Patentability, Public Health, and Anti-Evergreening Doctrine

This is perhaps the most controversial aspect of Indian patent law that has aroused international controversy, namely Section (d) of the Patents Act, 1970 (as amended in 2005). The provision makes the new forms of the already known substances patent ineligible unless they display improved therapeutic effect.

1. The Rationale

Section 3(d) was created due to the objections raised by the fact that drug companies might prolong their monopoly status using insignificant changes such as new salts, polymorphs, or formulations without any meaningful clinical benefit. These forms of evergreening might postpone competition on generic products and overprice. According to Article 27, member states are required to provide patents on inventions that are new, are composed of an inventive step and should be able to be applied industrially.⁵⁹ Nonetheless, TRIPS does not stipulate an innovative step or effectiveness. This interpretive space is created by this textual quietness. India took advantage of this room to define patentability in the sense that is in line with the priorities of public health.

2. Novartis AG v. Union of India

In *Novartis AG*, the Supreme Court of India upheld Section 3 (d) of the Patent Act of 1970 and denied Novartis a patent on the 3-crystalline form of *Imatinib Mesylate* otherwise known as Glivec.⁶⁰ In its rulings that stated that in case of pharmaceuticals, the meaning of efficacy in Section 3(d) of the Act should be read as therapeutic efficacy and not enhanced physical characteristics like flow or stability, the court explained that the efficacy of the drug in question. More importantly, the court highlighted that the Indian patent policy should strike the right balance between incentives to get innovation and the right to access cheap medicines. It dismissed the fact that it claimed that Section 3(d) breached TRIPS, as under TRIPS, members are allowed to establish standards on what defines patentability within a reasoned boundary. No hostile attitude towards innovation was evident in the judgment. Instead, it differentiated actual innovation and tactical patent prolongation. This argument would concur with the distributive and corrective aspects of development justice. India guaranteed the

⁵⁹ TRIPS Agreement art. 27.

⁶⁰ *Novartis AG v. Union of India*, (2013) 6 S.C.C. 1 (India).

proportionality by ensuring that trivial monopolies are blocked and protection of substantive inventions is still provided.

B. Compulsory Licensing: Bayer v. Natco and the Right to Affordable Medicines

Compulsory licensing is also one of the most controversial TRIPS flexibilities. In Article 31 TRIPS allows members to approve the use of patented invention without the permission of the inventor under the defined circumstances.⁶¹ In 2012, a compulsory license was granted to Natco Pharma by the Indian Controller of Patents on Sorafenib Tosylate, which is a life-saving drug against cancer patented by Bayer and sold under the brand Nexavar.⁶²

TRIPS Compliance and International Reaction

India did not fail to comply with procedural requirements, offered royalties to Bayer and based its decision on statutory standards that were in line with TRIPS. Although there were concern of some developed states, no WTO dispute was successful against India.

The episode demonstrates that development justice may be conveniently operationalized without violating the international commitments. It also displays sovereign justice: regulatory freedom in a country in a responsible manner within the framework of a treaty.

Critically, India has not granted compulsory licenses without a reason. The mechanism will continue to exist but will not be frequently exploited. Such a holdback enhances trustworthiness.

C. Pre-Grant and Post-Grant Opposition: Procedural Justice in Practice

⁶¹ TRIPS Agreement art. 31.

⁶² Bayer Corp. v. Natco Pharma Ltd., Compulsory License Order No. 1 of 2012 (India).

India also has a strong opposition system to patent application enabling third parties to object to patent applications prior to and post-granting. Such procedures make patent examination more democratic. Evidence challenging novelty, inventive step, or compliance of Section 3(d) may be submitted by civil society organizations, advocates of public health and by generic manufacturers. Procedural justice is reflected by such structures of participation. They help to increase transparency as well as avoid automatic issuance of dubious patents. Unlike structures where patent examination is carried out in a large part in administrative silos, the Indian model encourages wider participation. The aspect of participation enhances local and foreign legitimacy.

D. Plant Variety Protection and Farmers' Rights

Article 27.3(b) of TRIPS states that the members must protect the plant varieties via patent, an effective *sui generis* system or *sui generis*, or a mixture of the two.⁶³

India has implemented the Protection of Plant Varieties and Farmers rights Act (PPVFR Act) According to which rights of plant breeders are ensure and farmers are allowed to save, utilize, sows, re-sows, exchange, share, and offer farm produce (subject to restrictions).

This recognition is dual, and it shows distributive justice and sovereign justice. It recognizes the innovation incentives and protects the agrarian communities that the socio- economic structure of India revolves around. The inequality in rural areas of a country where agriculture is a leading means of livelihood, may only worsen with breeder-based regimes that are purely breeder-centred. The *sui generis* strategy of India proves that the flexibility of TRIPS can be applied to cultural and developmental particularities.

E. Copyright and Educational Access

⁶³ TRIPS Agreement art. 27.3(b).

The copyright control system in India includes indiscriminate exceptions to education and research. *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, the Delhi High Court affirmed the copyright lawfulness of course packs created out of the copyrighted material to be used in academics. The court interpreted statutory exceptions in a purposive manner which focused more on the significance of access to education in the society. Such a rationale is constitutional morality, distributive justice. The copyright protection does not supersede the educational equity, although the legislation continues to protect copyright.⁶⁴

F. Vaccine Diplomacy and Global Solidarity

The production capacity of the pharmaceutical industry in India made India one of the most important sources of cheap vaccines as the COVID-19 pandemic continued. India also made efforts to sell vaccines to many developing nations under the initiative known as *Vaccine Maitri*. Although this initiative was not an intellectual property issue *per se*, it shows the more general developmental direction of the pharmaceutical ecosystem in India, an ecosystem historically conditioned by controlled patent policy.

India also co-sponsored demands of temporary TRIPS waiver under difficult times, citing that anomalous conditions called out of ordinary flexibility.⁶⁵ This attitude is that of Global South solidarity. It does not oppose intellectual property but it questions inflexibility in cases of emergency.

G. Resistance to TRIPS-Plus Pressures

India has continually opposed TRIPS-Plus terms in bilateral trade agreements such as the extension of data exclusivity and period of patents exceeding the

⁶⁴ *Chancellor, Masters & Scholars of Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 6229.

⁶⁵ WTO, Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19, WTO Doc. WT/MIN(22)/30 (2022).

multilateral demands. India maintains regulatory space by grounding its IP policy on WTO requirements, as opposed to bilateral expansions. Such a way shows the justice of the sovereign and diplomatic wisdom. India has continued to negotiate with the world in the global trade and protect constitutional balance.

H. Evaluating the Indian Model

The model of India has had its strengths and weaknesses. Some of the critics believe that the stringent patentability provisions can act as a deterring aspect to foreign investment. Advocates refute that clear and predictable standards promote stability in the long term and forestall abuse. The fact that India has a calibrated regime is not empirically substantiated by the fact that it hinders innovation. Quite on the contrary, maturing home-based pharmaceutical research and rising world integration has been experienced in India. More crucially, the IP framework of India has local legitimacy since it appeals to the values in the constitution. Development justice is not a theory in isolation itself, it is an institutional practice.

The strategic compliance of India explains that TRIPS do not have to be construed as a strict trade device that is not related to welfare issues. Careful statutory expression, judicial logic and administrative processes make it possible to reconcile international commitments with national morality by the Global South state. Pharmaceuticals, but not the only ones: Climate Technology, Digital Knowledge, and Future Development Justice.

I. Expanding the Development Justice Lens

Although the greatest focus has been induced by access to medicines, the developmental consequences of intellectual property have now expanded into the areas that will characterize the twenty-first-century global order, climate mitigation technologies, digital infrastructure, artificial intelligence, and data governance. The structural asymmetries which were present in the previous sectors also exist- indeed they are even exaggerated- in these sectors. As

concentration of patents, monopolisation of platforms and algorithmic dominance, they are disproportionately found in the advanced industrial economies. To the Global South, the difficult issue is not affordability but being dependent on technology. The train of forward-looking adaptation is therefore needed in development justice. Intellectual property needs to enable engagement in the new technological ecosystems instead of harbouring digital or environmental marginalisation.

A. Climate Technology and Intergenerational Justice

1. Patent Focusing and Energy Changeover.

The use of climate mitigation technologies: solar photovoltaics, wind turbines, battery storage systems, carbon capture technologies, is commonly covered by patent portfolios in the developed world. Poor countries have a twofold pressure: carbonise fast to satisfy international climate targets and keep the economy growing and industrialised.

When access to clean technologies is limited due to high licensing or restrictive patenting practices, then the cost of transition would be unfairly distributed. With development justice, the concept of intergenerational equity is brought into IP interpretation.⁶⁶ Delayed climate action is a problem that is faced by future generations. Hence, intellectual property governance is supposed to be rampant to sustainability concerns.

2. TRIPS and Technology Transfer

Article 66.2 of TRIPS requires the members of the developed countries to give incentives to businesses to enhance the transfer of technology to the least-

⁶⁶ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* 19–25 (1989).

developed nations.⁶⁷ But practical practise has been faulted as wanting. The development justice approach would enhance the reporting system, transparency, and accountability in terms of technology transfers undertakings. Strategic direction can be illustrated by domestic development of the renewable energy in India. On the one hand, India has sought to preserve patent rights in enhancing its domestic manufacturing, public- private, and research co-operations as a means of limiting technological dependence. It is not aimed at expropriation of patents but the development of ecosystems.

B. Digital Infrastructure and Knowledge Concentration

1. Platform Economies and Copyright Control

Access to information, production culture, and commerce takes place through digital platforms. Digital enforcement of copyright can strengthen market concentration alongside other experiences that have platform intermediaries are in disproportionate control.⁶⁸ Digital access is connected to education, small-scale business, and civic responsibility in most of the Global South societies.⁶⁹ Unreasonably restrictive implementation regimes can stifle innovation and withdrawal of user privileges. The Indian vision on intermediary liability and regulation of the digital arena reveals the attempts to manage the interests of the rights holders and digital inclusiveness. Although the issue of policy discussion is still underway, the principle underpinning the process is the need to have space with local digital entrepreneurship. Justice in the form of digital IP governance insists in development on privacy of user rights and fair use; monopolistic concentration should be avoided and promoting open innovation communities.

⁶⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights art. 66.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

⁶⁸ Shoshana Zuboff, *The Age of Surveillance Capitalism* 93–120 (2019).

⁶⁹ Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* 63–85 (2019).

C. Artificial Intelligence and Data Governance

The artificial intelligence is a boundary point where the intellectual property crosses over the path of information access, exposure of algorithms and tech dominion. Neural systems make use of large volumes of data. There are questions on whether training data should get copyright, whether AI-created inventions are patentable, and whether algorithmic products should be owned.⁷⁰ In the case of Global South, failure to be part of AI development is a threat of marginalisation at the economical level in the long term. Development justice also involves making sure that there is access to knowledge facilities and a decline of the enclosure of technology. The other way to go represents the emerging model of digital public infrastructure in India, which focuses on open standards and interoperability. Without eliminating protection of intellectual property, such infrastructure lowers the barriers to entry and promotes innovation in the domestic market. This is not aimed at undermining IP, but to avoid the development of structural exclusion by knowledge economies.

D. Education in the Digital Age

The coronavirus exposed online learning platforms to the full range of opportunities and vulnerability. The implementation of copy protection in the digital realm may have an impact on the availability of textbooks, publication of research, and sharing of knowledge. Development justice advocates strong brotherhoods against instruction use, more so in low contexts of income. The recent judicial tendency in India regarding educational copyright infringement cases proves the purposeful interpretation per access goals. Equity in education is especially more vital in the digital age. The IP governance has to evolve to fit the emerging forms of knowledge distribution.

⁷⁰ WIPO, *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence* 10–18 (2020).

E. South-South Cooperation and Normative Solidarity

Global South solidarity is not a fallacy but is seen in concerted negotiations in the multilateral platforms. In discussions related to the pandemic, an initiative was made by India and South Africa to come up with temporary TRIPS waivers on technologies pertaining to COVID.⁷¹ This suggestion was highly controversial, yet it highlighted the togetherness in asserting the developmental priorities. These efforts are an indicator of transitioning away not only to standalone national activity but also to South-South advocacy. Geopolitical importance is therefore given to development justice. It reinvents Global South states as opposed to rule-takers but peacefully, as a contributor to global governance transformation.

F. Balancing Innovation and Inclusion

The criticism that has been widely leveled against development-oriented intellectual property systems is that they can discourage foreign direct investment or even reduce technological co-operation opportunities. However, sustainable innovation ecosystem is based on legitimacy.⁷² Political backlash can be a factor that disrupts markets when IP regimes are seen to be increasing inequality or hindering welfare. Predictable yet flexible balanced frameworks are used to support long term credibility. The history of the Indian IP policy illustrates the possibility of maintaining a strong investor response and developmental protection: the development of pharmaceutical research practices, digital innovations, and opportunities in renewable-energy industries have increased at the same time as the firms observe careful upholding of patentability requirements. In this respect, predictability, transparency and constitutional coherence are needed.

⁷¹ Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19, WTO Doc. IP/C/W/669 (Oct. 2, 2020).

⁷² Joseph E. Stiglitz, *Economic Foundations of Intellectual Property Rights*, 57 Duke L.J. 1693, 1700–05 (2008).

G. Reframing Global IP Governance

The fact that development justice has been extended to climatic, digital, and AI spheres implies that TRIPS reinterpretation is not limited to the conventional discussion of medicines; it is the figure that helps create the new technological order. The regime developed during the first half of 1990s needs to face the problems of the twenty-first century: global pandemics, the climate crisis, digital monopoly, and paperless rule. The reinterpretation does not include a renegotiation of the treaty: it involves the application to Articles 7 and 8 on constitutional ethics and morality in dialogue with other countries at the multilateral level. The Global South contribution is neither confrontational nor destructive, it is productive, and it promotes a future where innovation and equity support each other and not their partners in crimes.

Reinterpreting TRIPS Through the Vienna Convention: Text, Context, and Purpose

Treaty Interpretation as a Site of Normative Reconstruction

Should TRIPS be developed to be more developmentally just rather than a foreteller of trade discipline, this change should be made within the parameters of the international law. Reinterpretation is justified not by the rhetorical values of politics but rather by adherence to the doctrine. The interpretation paradigm is the Vienna Convention on the Law of Treaties. As much as TRIPS is an annex to the Marrakesh Agreement that made the WTO, the panels of which and the Appellate Body have always affirmed the role of VCLT in treaty interpretation. Article 31(1) of the VCLT states that a treaty is to be read in the good faith and interpreted according to the ordinary meaning of its words, contexts and referring to the object and purpose of a treaty.⁷³ Article 31 (3) (c) also permits reference to any applicable international law rules that may be applicable in intercourse

⁷³ Vienna Convention on the Law of Treaties art. 31(1), May 23, 1969, 1155 U.N.T.S. 331.

between parties.⁷⁴ These clauses provide space in development justice within the doctrines.

A. Textual Foundations Within TRIPS

The starting point to be used in the interpretation is the text of TRIPS itself, specifically Articles 7 and 8. Article 7 provides that protection and enforcement of intellectual property rights must help fuel technological innovation, transfer and dissemination of technology, mutual benefit of producers and users, social welfare and economic welfare and a balance of rights and rights. Article 8 reaffirms that members have the right to take any measures they consider appropriate to save needless gatherings of people health and food, and to advantage the people in areas thereof of crucial significance, as long as these actions are not conflicting with the TRIPS. These clauses are not recitations; they and express the subject and aim of the contract.⁷⁵ According to VCLT approach, interpretation of substantive obligations is directed by object and purpose. In turn, Articles 7 and 8 can be used as contexts when considering patentability under Article 27 or compulsory licensing under Article 31. A development-justice practice never goes over and above the textual commitments but interprets the textual objectives in a harmonious manner with the stated aims.

B. The Doha Declaration as Subsequent Agreement

Article 31(3) (a) of the VCLT acknowledges the fact that any later agreement between the parties with regards to how to interpret the treaty is supposed to be put into consideration. One such interpretation of understanding is the Doha Declaration on the TRIPS Agreement and Public Health adopted in 2001.⁷⁶ The declaration confirms that TRIPS is and can be interpreted and enforced in a

⁷⁴ Id. art. 31(3)(c).

⁷⁵ TRIPS Agreement arts. 7–8.

⁷⁶ World Trade Organization, *Declaration on the TRIPS Agreement and Public Health*, WTO Doc. WT/MIN(01)/DEC/2 (Nov. 14, 2001).

manner that would enable WTO members to uphold the right to protection of public health. This phrasing is another important piece of evidence that the considerations of public welfare are not mere peripheral exceptions, but justifiable interpretive priorities. According to the WTO principles of VCLT, the subsequent agreements are required to be taken into account by the WTO panels interpreting the TRIPS provisions. Multilateral practice is thus explicitly textually reinforced by development justice.

C. Systemic Integration: Human Rights and Sustainable Development

The concept of systemic integration, which is presented by the article 31(3) (c) of the VCLT, permits interpreters to take into account the rules of the international law which are relevant between parties.⁷⁷ Majority of the WTO members also sign international human-rights treaties that acknowledge rights towards health, education and development. The concept of sustainable development has turned out to be a cross-cutting goal of the international-law discourse. Systemic integration does not reduce TRIPS to the human-rights law, but as a matter of fact, it demands harmonisation. An example: in the interpretation of the scope of compulsory licensing, panels can have regard to the public-health provisions of human-rights instruments; in determining the practice of technology-transfer commitments, the principles of sustainable-development are usually contextual. Through such an integrative approach to international law, a greater level of coherence is ensured in the international law and the development justice made consistent with the systematic integration.

D. Proportionality and Regulatory Autonomy

Non-TRIPS WTO jurisprudence common to perhaps all but especially the General Agreement on Tariffs and Trade has developed proportionality-like

⁷⁷ Campbell McLachlan, *The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention*, 54 *International and Comparative Law Quarterly* 279, 280–83 (2005).

arguments to consider domestic regulatory interventions on trade.⁷⁸ The question as to whether the measure adopted by a member is optimal in protecting public health or seeking to boost availability of vital goods should not be whether the measure is textually limits, but whether it is used in good faith. In India, Section e.g. 3(d) does not ordinarily disallow patents, but narrows down the conditions of patentability where a definable domain can exist. In Article 31, the procedural safeguards and sufficient compensation are obligatory to compulsory licensing. Under conditions of such satisfaction, development-oriented use is treaty-consistent. There is no therefore the implication of the disregard of discipline in reinterpretation; it involves disciplined balancing.

E. The Limits of TRIPS-Plus Expansion

TRIPS-Plus standards, e.g. full twenty-year data exclusivity or twenty-year or more patent term extensions, are often included in bilateral and regional trade agreements. Although states are free to enter into such agreements, there is a systemic threat of the erosion of the multilateral equilibrium of TRIPS with the proliferation of the TRIPS-plus standard. In development justice, it is vital to have a retention of multilateral interpretive space. Procedural and distributive issues in justice will occur when the dominant economies utilise asymmetrical bargaining positions to institute increased standards. The reluctant attitude by India to TRIPS-Plus commitments represents prudence by the sovereign. India is constitutionally aligned by following the multilateral baselines without expanding beyond them. It is not a confrontational strategy and is sympathetic to negotiated multilateral consensus.

F. Judicial Dialogue and Epistemic Legitimacy

⁷⁸ Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO Doc. WT/DS161/AB/R (Dec. 11, 2000).

Domestic courts are very important in inculcating the development justice in the international compliance. The approach by the Supreme Court of India in *Novartis* case shows a cautious path to India's obligations and international commitments.⁷⁹ In applying the domestic law to rely on the objectives of public health, the court expressly recognised the commitments made through TRIPS. Epistemic legitimacy is achieved by such jurisprudence. It is an indication that Global South countries are not neglecting the treaty law, but they are doing so intelligently. Normative coherence is improved by this judicial dialogue between trade regimes and the domestic constitutional courts on the international trade level.

One of the key dangers of global governance is fragmentation, that is, competing normative regimes that act alone. Development justice aims at balancing and not discontinuity. It is not a proposal of unilateral violation of TRIPS obligations. Rather, it stipulates that interpretation should be unfaithful to object and purpose. Inflexible application neglecting the welfare issues is prone to political backlash, fatigue and loss of legitimacy of the treaty. Varying meaning enhances stability.

G. From Textual Constraint to Normative Evolution

Treaties are dynamic tools working in the dynamic socio-economic realities. TRIPS was also agreed upon prior to the maturation of the digital revolution, prior to the climate crisis escalation and prior to the pandemic exposing global supply vulnerability. Development justice is not revisionism, but is instead adaptive fidelity. The concepts of object and purpose should be interpreted according to the valuables presented in the current scenario under the principle of the VCLT. Social and economic welfare, directly alluded to in Article 7 cannot be entrenched in 1995 notions. Due to the changes in the technological paradigm, interpretive emphasis has to be altered as well.

⁷⁹ *Novartis*, supra.

H. India as Diplomatic Bridge

India is in an intermediate status between the developed and the developing economies⁸⁰. It is significantly engaged in international trade without discrimination towards equity in development. This two-sided identity allows India to formulate proposals of reform on the basis of both rule-based multilateralism and constitutional morality. According to a pro-India diplomatic framing, a focus will be made on: resolution to comply with TRIPS; Global South solidarity leadership and Positive participation in multilateral reform. This normative authority through such positioning improves without an antagonistic posture.

Conclusion

The Agreement on Trade-Related Aspects of Intellectual Property Rights is at a crossroads within the history of its groundbreaking acceptance following the adoption procedure by the WTO Agreement three decades ago. TRIPS gained intellectual property into a regulatory convergence and liberalization framework with rules-based enforcement and dispute settlement and trade retaliation, the first application of intellectual property into a constitutional-level global trade framework.

However, it is not merely that the law of the land can enforce it that legitimacy in international law is rested. This paper is based on the idea that although TRIPS was negotiated as a tool of trade discipline, the seeds of a wider developmental agreement can be found in the text. Article 7 and 8 are a statement of the vision where IP protection would help in the diffusion of technology, social and economic good, and balancing rights and obligations. The Doha Declaration restated that the set of considerations regarding public health does not belong to the periphery of TRIPS but is one of its interpretations. The point is not that there

⁸⁰ Amrita Narlikar, *Poverty Narratives and Power Paradoxes in International Trade Negotiations* 145–60 (2020).

is not enough textual content, then. It is that it has an issue with interpretive orientation.

Intellectual property does not exist in the normative vacuum in transformative constitutional democracies of the Global South. It cuts across constitutional rights to equality, dignity, health, education and distributive justice. The case law of the Supreme Court of India displays that statutory interpretation should not prejudice these higher constitutional undertakings. Opponents of the TRIPS agreements can use India as a prime example of the way in which the mandatory aspects of the laws (such as sections 3(d), compulsory licensing and participatory opposition) have been used to show that the compliance with the TRIPS does not entail relinquishing of the public-welfare protection of the law. Instead, it involves principled normative interaction in the allowable space of interpretation of the treaty. The constitutional morality thus does not operate in a rebellious dominance of the responsibility of other countries but rather serves to operate like a balancing force so that international commitments are compatible with national justice.

In this paper, we introduced development justice as a conceptualized theoretical framework of recalibration of the international intellectual-based governance of intellectual property. Through the expression of five pillars which are interrelated, namely corrective, distributive, procedural, intergenerational, and sovereign justice, it illustrates that IP law is to be considered as having incentive, distributive, and developmental impacts. The development justice does not promote a wholesale undermined incentives of innovation. It demands proportionality. The issue of exclusivity to rights is critical in the development of science, but it cannot be used to override the provision of basic goods or the capacity of building technological capacity. The framework places TRIPS in a wider ethical horizon one that is concerned by the historical asymmetry, modern day inequality, and future sustainability.

The case of India shows how a Global South state can maneuver around multilateral commitments to continue to have domestic regulatory room as well as to remain credible internationally. India has been able to operationalize development justice by withstanding TRIPS-Plus pressures and through judicious use of compulsory licensing and maintaining high standards of patentability rules and did not forego rule-based trade participation. Besides, the participation of India in multilateral discourses especially in the face of the world crises in matters concerning public-health is an indicator of moving beyond defensive mentioning of flexibilities to normative leading aspect. Instead of destabilizing, global South solidarity strengthens the multilateral system when it is built not only on the basis of a doctrinal legitimacy, but also on the basis of constitutional coherence as well.

The viability of TRIPS is based on how it is able to react to modern realities pandemic preparedness, climate mitigation, digital concentration, and artificial-intelligence governance. When read literally, TRIPS can be seen as putting itself in a position of being inconsiderate of the welfare demands. Treaty content interpreted purposively in the light of its object and purpose as expressed in Articles 7 and 8 and with reference to the principles of treaty interpretation provided under the Vienna convention on the law of treaties, may become a system of equal world cooperation. The immediate location of change is not the renegotiation, but interpretation.

The debate is not between protection and abolition. It is between absolutism and equilibrium. Intellectual property is a means—an instrument for encouraging innovation, disseminating knowledge, and fostering technological advancement. When detached from social purpose, it becomes self-referential. When anchored in development justice, it regains legitimacy. The Global South does not seek to dismantle the multilateral trading system. It seeks equilibrium within it. India's constitutional experience demonstrates that such equilibrium is achievable: innovation incentives can coexist with public health safeguards; trade

commitments can align with social justice; global engagement can reinforce domestic welfare.

From trade discipline to development justice is not a rupture-it is an evolution. It is the recognition that global intellectual property governance must serve humanity's shared aspirations: dignity, equality, sustainability, and opportunity. TRIPS, interpreted through constitutional morality and development justice, need not remain a symbol of asymmetry. It can become a framework of cooperative advancement-where innovation thrives not at the expense of welfare, but in partnership with it. Only then will intellectual property fulfill its highest purpose: not merely protecting markets, but empowering societies.