THE HISTORICAL EVOLUTION OF INDIAN PATENT LAW: FROM COLONIAL BORROWING TO TRIPS-ERA PUBLIC INTEREST SAFEGUARDS

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ABSTRACT

The historical evolution of Indian patent law as a dynamic legal response to changing political, economic and public health imperatives. It argues that the development of patent law in India cannot be understood merely as a sequence of statutory enactments; rather, it reflects a deeper struggle over the relationship between innovation, monopoly, industrial development and social welfare. The chapter begins by tracing the colonial origins of patent protection in India through the enactments of 1856, 1859, and the Indian Patents and Designs Act, 1911, showing how these laws were largely transplanted from British models and aligned with imperial commercial priorities. It then analyses the post-independence rethinking of patent policy through the work of the Bakshi Tek Chand Committee and the Ayyangar Committee, both of which reoriented patent law toward national development, access to essential goods, and control over abuse of monopoly power. It further explores the transformative significance of the Patents Act, 1970, which introduced a development-oriented framework by excluding product patents in food, medicines, and chemicals while strengthening compulsory licensing and public-interest safeguards. It then studies the shift brought about by India's accession to the World Trade Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), focusing on the amendments of 1999, 2002, and 2005. Particular attention is given to the manner in which India moved toward TRIPS compliance without entirely abandoning its public-interest philosophy. In this regard, the chapter highlights section 3(d), compulsory licensing, opposition mechanisms, and the Supreme Court's decision in *Novartis AG v. Union of India* as key elements of India's contemporary patent identity. The chapter concludes that Indian patent law represents a distinctive legal tradition in which international obligations have been mediated through constitutional values, developmental priorities, and the continuing commitment to balancing innovation with the larger public good.

Keywords: Patent, TRIPs, Pharmaceutical, Public Interest

Introduction

The history of Indian patent law is not merely a chronology of statutes. It is also a history of how law mediated political economy, industrial policy, public health, and the changing relationship between India and the world. The earliest patent enactments in India did not emerge from an indigenous demand for exclusive rights over inventions. They were introduced in the colonial period, borrowed largely from British models, and were closely tied to imperial commercial priorities.[1] That starting point is important because it explains why the law of patents in India has always been accompanied by a deeper normative question: *whose innovation is patent law meant to reward, and to what social end?*

Any careful study of Indian patent law must therefore proceed in two movements. The first is historical. It traces the path from the colonial statutes of 1856 and 1859 to the Indian Patents and Designs Act, 1911, and then to the post-independence reassessment that culminated in the Patents Act, 1970. The second is ideological. It shows how India gradually moved from a transplanted colonial patent model toward a development-oriented patent regime, and then, after joining the World Trade Organization (WTO), toward a TRIPS-compliant system that nonetheless retained important public-interest safeguards.[2]

It revisits the colonial origins of patent protection in India, examines the post-independence critique led by the Bakshi Tek Chand Committee and the Ayyangar Committee, analyses the developmental logic of the Patents Act, 1970, and then studies how the 1999, 2002, and 2005 amendments recalibrated Indian law in response to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Throughout, the attempt is to present the story in a more natural and analytically grounded voice, while preserving doctrinal accuracy and an explicitly legal focus.

I. Before Colonial Patent Law: Knowledge, Craft, and the Absence of a Modern Patent Statute

It would be historically misleading to say that India had no culture of innovation before the arrival of modern patent legislation. What India lacked was not inventive practice, but a modern statutory system of proprietary rights in inventions of the kind that developed in Europe in the

[1] Intellectual Property India, *History of Indian Patent System*, available at: https://ipindia.gov.in/pages/patents/about-us/history-of-indian-patent-system (last visited on Apr. 9, 2026).
[2] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (Government of India, 1959), available at: https://spicyip.com/wp-content/uploads/2013/10/ayyangar_committee_report.pdf (last visited on Apr. 9, 2026).

early modern and industrial periods. Knowledge in pre-colonial India circulated through guilds, artisanal lineages, courtly patronage, hereditary practices and pedagogic traditions such as the *guru-shishya* system. Technical know-how in fields such as metallurgy, medicine, agriculture, weaving, construction and dyeing was often protected by social norms, secrecy, custom, caste-based transmission or collective control rather than by individual legal monopolies.[3]

This distinction matters. Modern patent law rests on a specific legal bargain: in return for disclosure of an invention, the State grants the inventor a temporary monopoly. That bargain presupposes a particular conception of authorship, property, market competition, and state administration. Pre-colonial Indian knowledge systems did not operate on that template. Their internal norms may have protected craft secrets and rewarded skill, but they did not ordinarily convert knowledge into a statutorily enforceable private monopoly against the world at large.[4]

For that reason, the entry of patent law into India should be understood as a moment of legal transplantation. It was not the gradual juridification of an already existing Indian patent culture. Rather, it was the colonial state importing a legal technology shaped elsewhere and adapting it to imperial conditions.[5] Seen in that light, the history of Indian patent law begins not as a neutral story of modernization, but as part of the larger colonial project of regulating trade, production, and industrial advantage.

II. Colonial Transplantation and the Early Patent Statutes

1. Act VI of 1856: The first Indian patent enactment

The first patent legislation in India was Act VI of 1856. The object of the statute was to encourage inventions of new and useful manufactures and to induce inventors to disclose the secrets of their inventions.[6] In design, it drew heavily from the British Patent Law of 1852. In substance, however, its significance lies less in doctrinal innovation and more in institutional symbolism: for the first time, the colonial state recognized invention as a subject of formal legal protection in India.

[3] G.K. Tulasi, V.K. Rao and S.M. Khan, A Detailed Study of Patent System for Protection of Inventions, 69(3) *Indian Journal of Pharmaceutical Sciences* 547 (2007/2008), available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC3038276/ (last visited on Apr. 9, 2026).
[4] World Intellectual Property Organization, *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Related Instruments* (WIPO Publication No. 223, 1996), available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_223.pdf (last visited on Apr. 9, 2026).
[5] IP India, *History of Indian Patent System*.
[6] IP India, *History of Indian Patent System*.

The Act granted a form of "exclusive privilege" for a limited term and required a written description of the invention. Even at this early stage, one can see the classic patent bargain at work: disclosure in exchange for temporary exclusivity. Yet the Act had a short life. It was repealed by Act IX of 1857 because it had been enacted without the approval of the British Crown, which was necessary under the governing constitutional arrangements of the time.[7]

Although short-lived, Act VI of 1856 remains historically important for three reasons. First, it established the vocabulary of exclusive privilege in relation to invention. Secondly, it marked the beginning of a legal framework that would progressively align Indian patent law with British imperial commercial interests. Thirdly, it demonstrated that the colonial administration regarded invention not simply as a matter of individual ingenuity, but as an object of state regulation that could be fitted into the broader architecture of empire.[8]

2. Act XV of 1859: Re-enactment and modification

The repeal of the 1856 legislation did not end the experiment. Fresh legislation was enacted in 1859 as Act XV of 1859. This statute modified the earlier law in important ways. The official IP India history notes that it limited exclusive privileges to useful inventions, extended the priority period from six months to twelve months, excluded importers from the definition of inventor and incorporated novelty-related departures from the British model, including prior public use or publication in India or the United Kingdom for the purpose of testing novelty.[9]

These changes are revealing. On the one hand, the exclusion of importers from the definition of inventor narrowed the class of persons entitled to claim patent-like rights in India. On the other hand, the larger structure still remained deeply colonial. The statute was designed to facilitate a legal environment in which inventions that mattered to imperial trade could be protected in India. It did not arise out of any systematic attempt to cultivate indigenous inventive capacity. The legal form was universalist but the economic setting was imperial.[10]

For that reason, the 1859 Act should be read as both a consolidation and a correction. It corrected the procedural defect that had invalidated the 1856 legislation. But it also consolidated the idea that India would receive patent law through British legislative borrowing.

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[7] IP India, *History of Indian Patent System*.
[8] Intellectual Property India, *Manual of Patent Practice and Procedure* (Patent Office, 2008), available at: https://ipindia.gov.in/frontend/pdf/patents/1_59_1_15-wo-ga-34-china.pdf (last visited on Apr. 9, 2026).
[9] IP India, *History of Indian Patent System*.
[10] G.K. Tulasi, V.K. Rao and S.M. Khan, A Detailed Study of Patent System for Protection of Inventions, 69(3) *Indian Journal of Pharmaceutical Sciences* 547 (2007/2008).

The basic conceptual architecture of patent protection in India was now decisively tied to the imperial centre.

3. The 1872, 1883 and 1888 enactments: consolidation without democratization

The next stage in the story is less dramatic but equally instructive. In 1872, the Act of 1859 was consolidated and renamed as the *Patterns and Designs Protection Act* under Act XIII of 1872. The law was later amended in 1883 and, in 1888, was further consolidated and amended in light of modifications made in the United Kingdom.[11]

The 1883 amendment introduced a grace period for inventions that had been disclosed at exhibitions in India. The 1888 Act, in turn, attempted to bring Indian law into closer conformity with developments in British law.[12] These changes may appear technical, but they reveal the structural position of Indian patent law in the colonial order. Innovation in Britain remained the reference point; Indian legislation followed.

There was, however, a limit to what these late nineteenth-century reforms accomplished. They rationalized procedure, but they did not democratize access. Patent protection remained expensive, administratively remote and socially inaccessible to most Indians. Nor did the law recognize the collective, incremental and community-based knowledge systems that had long shaped productive life in India. In practice, therefore, these statutes brought greater formal order, but they did not transform the patent system into an engine of broad-based Indian innovation.[13]

4. The Indian Patents and Designs Act, 1911

The Indian Patents and Designs Act, 1911 marked the first comprehensive patent statute for British India. It replaced the previous enactments and, significantly, brought patent administration under the Controller of Patents for the first time.[14] In this sense, the 1911 Act was the foundational administrative statute of modern Indian patent governance.

The 1911 Act was later amended in 1920, 1930 and 1945. The 1920 amendment introduced reciprocal arrangements for securing priority with the United Kingdom and other countries. The 1930 amendment brought in provisions relating to secret patents, patents of addition,

[11] IP India, *History of Indian Patent System*.
[12] IP India, *History of Indian Patent System*.
[13] G.K. Tulasi, V.K. Rao and S.M. Khan, A Detailed Study of Patent System for Protection of Inventions, 69(3) *Indian Journal of Pharmaceutical Sciences* 547 (2007/2008).
[14] IP India, *History of Indian Patent System*.

governmental use, rectification of the register and the increase of patent term from fourteen to sixteen years. The 1945 amendment allowed the filing of a provisional specification followed by a complete specification within a prescribed period.[15]

At one level, these changes show institutional maturation. Patent administration became more structured; the categories of patent law became more sophisticated; the state's role became more explicit. At another level, however, the statute still reflected colonial priorities. The 1911 Act was enacted for a colonial economy in which control over industrial technology and trade remained heavily externalized. As later committees would point out, the system left considerable space for monopoly without adequate safeguards against abuse, especially in sectors such as food and medicine.[16]

III. Independence and the Reassessment of Colonial Patent Law

When India became independent in 1947, it inherited a patent regime that was formal, serviceable, and deeply unsuited to the developmental ambitions of the new State. The problem was not merely that the law was old. The deeper problem was that it had been designed for a different political economy. An India committed to industrialization, distributive justice and economic self-reliance could not simply continue with a patent system shaped by colonial priorities.[17]

It is in this context that the post-independence committees assume such importance. The debate was no longer only about how patents should be granted. It was about the larger function of patent law in a poor, newly independent and industrially ambitious society. Should patent law reward private monopoly in the abstract? Or should it be reorganized so that monopoly remained subordinate to public purpose? The two great committee exercises of the post-independence period namely the Bakshi Tek Chand Committee and the Ayyangar Committee answered that question in favour of a more developmental and public-interest oriented patent regime.[18]

1. The Bakshi Tek Chand Committee, 1949–1950

The Government of India constituted the Bakshi Tek Chand Committee in 1949 to review the

[15] IP India, *History of Indian Patent System*.
[16] Bakshi Tek Chand et al., *Report of the Patents Enquiry Committee, 1948–50* (Government of India Press, 1950), available at: https://archive.org/details/dli.csl.1934 (last visited on Apr. 9, 2026).
[17] IP India, *History of Indian Patent System*.
[18] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).

working of the patent system and to examine whether the law should be revised in the national interest.[19] The official history page of IP India records the terms of reference in detail. They included reviewing the working of the system, examining the existing legislation with special attention to abuse of patent rights, considering whether special restrictions should be imposed on patents concerning food and medicine, studying the Patent Office, and recommending reforms that would make the patent system more conducive to national development.[20]

These terms of reference are important in themselves. They show that, within two years of independence, the Indian State had already reframed patent law as an instrument of national policy rather than a self-justifying legal order. The Committee was not simply asked to modernize procedure. It was specifically asked to confront abuse, public interest, food and medicine, publicity for Indian inventors, and institutional reform.

The Committee submitted an interim report on 4 August 1949. Its recommendations led to significant amendments to the Indian Patents and Designs Act, 1911 through Act XXXII of 1950 and Act LXX of 1952.[21] The IP India history specifically notes that the Committee emphasized the need for the patent system to ensure that food, medicine, and surgical or curative devices should be made available to the public at the cheapest price consistent with reasonable compensation to the patentee.[22] That formulation deserves attention. It anticipates, in a remarkably clear way, the later Indian commitment to balancing patent incentives with affordability and access.

The 1950 amendment introduced stronger provisions relating to the working of inventions, compulsory licensing, revocation, and endorsement of patents with the words "licence of right".[23] The 1952 amendment went further by providing compulsory licensing in relation to food and medicines, insecticides, germicides, fungicides, and inventions relating to surgical or curative devices.[24] These amendments did not yet create the full architecture of the 1970 Act, but they unmistakably shifted Indian patent law toward a public-interest orientation.

The Report of the Patents Enquiry Committee itself confirms the seriousness of the exercise.[25] Later, Ayyangar would expressly acknowledge that the interim report had sought to counter

[19] IP India, *History of Indian Patent System*.
[20] IP India, *History of Indian Patent System*.
[21] IP India, *History of Indian Patent System*.
[22] IP India, *History of Indian Patent System*.
[23] IP India, *History of Indian Patent System*.
[24] IP India, *History of Indian Patent System*.
[25] Bakshi Tek Chand et al., *Report of the Patents Enquiry Committee, 1948–50* (1950).

the misuse or abuse of patent monopolies in India and that the 1950 amendments were enacted substantially on that basis.[26] The significance of Tek Chand, therefore, lies not merely in the specific provisions he influenced, but in the change of constitutional mood he represents: patent law was no longer to be treated as a neutral commercial code; it was now subject to a developmental and consumer-oriented critique.

2. The Ayyangar Committee, 1957–1959

If Tek Chand began the critique, Justice N. Rajagopala Ayyangar gave it enduring doctrinal shape. In 1957, the Government of India asked Ayyangar to advise on the revision of the law relating to patents and designs. His monumental 1959 report remains one of the most important documents in the history of Indian intellectual property law.[27]

The Ayyangar Report is remarkable for its breadth, realism, and policy sensitivity. It is comparative without being imitative. Ayyangar considered British, Australian, Canadian and other approaches, but he repeatedly insisted that Indian law had to be judged in the light of India's own economic conditions.[28] He explicitly noted that the 1948 Patents Enquiry Committee had been appointed to ensure that the patent system was more conducive to national interests.[29]

One of the report's most influential features was its analysis of patents for chemical substances, food and medicine. Ayyangar addressed the recommendation that inventions relating to substances prepared or produced by chemical processes or intended for food or medicine, should not be patentable except in respect of the invented process or its obvious equivalents.[30] This discussion became the intellectual foundation for India's later process-only approach in pharmaceuticals and chemicals.

Ayyangar was also deeply concerned with the misuse of patents as import monopolies. In one important passage, he observed that, without effective compulsory licensing and revocation mechanisms, patents could operate merely to secure a monopoly of importation and thereby block research and industrial activity in the relevant field.[31] That insight captured a central

[26] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[27] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[28] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[29] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[30] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[31] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).

anxiety of postcolonial patent policy: a patent that does not lead to local working or technology diffusion may entrench dependence rather than stimulate invention.

The report's recommendations on compulsory licensing, "licences of right", working requirements and revocation were correspondingly strong. Ayyangar proposed that, after three years from the sealing of the patent, interested persons should be able to apply for compulsory licences if the reasonable requirements of the public had not been satisfied.[32] He also contemplated endorsement of patents with the words "Licences of right" and supported revocation for non-working where the patent continued to fail the public after compulsory licensing or endorsement.[33] He specifically defended the inclusion of revocation for non-working in Indian law.[34]

The jurisprudential significance of Ayyangar's approach cannot be overstated. He did not reject the patent system as such. On the contrary, he recommended its retention. But he insisted that patent law in India must be structured in a manner consistent with industrial development, access to essential goods and the prevention of abuse.[35] In effect, he gave India a theory of patent law suited to a developing economy: patents were to be retained but domesticated.

IV. The Patents Act, 1970: India's Developmental Patent Constitution

The Patents Act, 1970 was the legislative culmination of the post-independence patent debate. Enacted on 19 September 1970 and brought substantially into force in 1972, it repealed and replaced the patent portions of the 1911 statute.[36] It did not emerge in a vacuum. It was the result of the Ayyangar Committee's recommendations, the political economy of self-reliant industrialization, and a policy judgment that patent law must be subordinated to the requirements of development and public welfare.[37]

The most famous feature of the 1970 Act was section 5, which excluded product patents for substances intended for use, or capable of being used, as food or medicine or drug, and for substances prepared or produced by chemical processes. In those areas, only process patents were permitted.[38] This was a radical and internationally distinctive design choice. It did not

[32] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[33] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[34] N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959).
[35] IP India, *History of Indian Patent System*.
[36] *The Patents Act, 1970*, No. 39 of 1970, India Code, available at: https://www.indiacode.nic.in/bitstream/123456789/1392/1/A1970-39.pdf (last visited on Apr. 9, 2026).
[37] IP India, *History of Indian Patent System*.
[38] *The Patents Act, 1970*, No. 39 of 1970.

eliminate incentives for process innovation, but it refused to allow originator firms to monopolize the end product itself in sectors of particular social importance.

The Act also imposed shorter effective exclusivity in sensitive sectors. Under the original section 53, patents concerning methods or processes of manufacture for food, medicine, or drug were subject to a much shorter effective term than ordinary patents.[39] Combined with process-only protection, this made Indian law substantially more favourable to follow-on manufacturers than the product patent regimes prevalent in many developed countries.

Equally important were the provisions on compulsory licensing and revocation. The Act empowered the Controller to grant compulsory licences where the reasonable requirements of the public had not been satisfied, where the patented invention was not available at a reasonably affordable price, or where the invention was not worked in the territory of India.[40] Revocation could follow where non-working persisted despite compulsory licensing.[41] These provisions reflected, almost word for word, the Ayyangar philosophy that patent rights are not absolute private entitlements but conditional privileges granted for public purposes.

The 1970 Act also incorporated opposition procedures, government-use provisions and institutional arrangements that made the Patent Office part of a more coherent administrative structure.[42] Taken together these provisions produced what may fairly be called India's developmental patent constitution. The law did not reject innovation. It rejected a patent regime in which monopoly was detached from local working, reasonable pricing, and national industrial growth.

The impact of this model on the pharmaceutical sector was profound. By permitting process patents but not product patents, India created legal space for domestic firms to manufacture the same medicine through alternative processes. Over time, this contributed significantly to the rise of India's generic pharmaceutical industry.[43] It would be simplistic to attribute the entire success of the Indian pharmaceutical sector to patent law alone; industrial policy, scientific capacity, entrepreneurship, and regulatory choices also mattered. But there is little doubt that the 1970 Act was one of the central legal foundations of that growth.

[39] *The Patents Act, 1970*, No. 39 of 1970.
[40] *The Patents Act, 1970*, No. 39 of 1970.
[41] *The Patents Act, 1970*, No. 39 of 1970.
[42] *The Patents Act, 1970*, No. 39 of 1970.
[43] G.K. Tulasi, V.K. Rao and S.M. Khan, A Detailed Study of Patent System for Protection of Inventions, 69(3) *Indian Journal of Pharmaceutical Sciences* 547 (2007/2008).

V. India, the WTO, and the TRIPS Transition

India became a founding member of the WTO in 1995. With WTO membership came a binding obligation to comply with the TRIPS Agreement, which forms Annex 1C of the Marrakesh Agreement establishing the WTO.[44] TRIPS altered the normative terrain of patent law by setting minimum standards that all WTO members had to implement. For patents, the most consequential provisions were Articles 27, 31, 33 and 70.

Article 27 requires that patents shall be available for inventions, whether products or processes, in all fields of technology, provided they are new, involve an inventive step, and are capable of industrial application.[45] Article 33 fixes the patent term at twenty years from the filing date.[46] Article 31 governs "other use" of patents without the authorization of the right holder, thereby providing the treaty basis for compulsory licensing.[47] Article 70.8 and 70.9 created a transitional framework for countries like India that did not then provide product patent protection for pharmaceutical and agricultural chemical products: such countries had to establish a "mailbox" for filing product patent applications and, in certain cases, grant Exclusive Marketing Rights (EMRs).[48]

For India, TRIPS created a difficult legal and political dilemma. The country had become internationally associated with a public-interest oriented patent model, especially in pharmaceuticals. Yet the new trade order required product patents in all fields of technology. India therefore chose a phased path to compliance, using the transitional space available under TRIPS while attempting to preserve as much policy flexibility as possible.[49]

1. The Patents (Amendment) Act, 1999

The first major step in this transition was the Patents (Amendment) Act, 1999, brought into force with retrospective effect from 1 January 1995.[50] The amendment provided for the filing

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[44] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, available at: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf (last visited on Apr. 9, 2026).

[45] WTO, *TRIPS Agreement, Article 27: Patentable Subject Matter*, available at: https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm (last visited on Apr. 9, 2026).

[46] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Apr. 15, 1994.

[47] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Apr. 15, 1994.

[48] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Apr. 15, 1994.

[49] Srividhya Ragavan, Patent Amendments in India in the Wake of TRIPS, *CASRIP Newsletter* (Winter 2001), available at: https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2760067_code367538.pdf?abstractid=2760067&mirid=1 (last visited on Apr. 9, 2026).

[50] *The Patents (Amendment) Act, 1999*, No. 17 of 1999, India Code, available at: https://www.indiacode.nic.in/repealedfileopen?rfilename=A1999-17.pdf (last visited on Apr. 9, 2026).

of applications for product patents in the fields of drugs, pharmaceuticals and agricultural chemicals, although such patents were not yet to be examined. Those applications would remain in the "mailbox" and be examined after 31 December 2004.[51]

The Act also created the EMR system. Applicants could, subject to specified conditions, obtain Exclusive Marketing Rights to sell or distribute relevant products in India for a limited period.[52] The 1999 amendment is best understood as a transitional compliance mechanism. It did not immediately dismantle the 1970 structure. Instead, it inserted the treaty-mandated bridge by which India moved from process-only protection in pharmaceuticals to eventual product patent recognition.

This was a legally careful and politically strategic amendment. It acknowledged India's WTO obligations, yet postponed the full consequences of product patenting. In doing so, it preserved regulatory time and institutional space. As Srividhya Ragavan observed in her analysis of the TRIPS-era amendments, the transition was shaped by a persistent concern to avoid the abrupt displacement of domestic public-interest priorities.[53]

2. The Patents (Amendment) Act, 2002

The second major step came with the Patents (Amendment) Act, 2002, which entered into force on 20 May 2003.[54] This amendment modernized the system in several important respects. It aligned the patent term with the TRIPS requirement of twenty years from the filing date. It refined the definitions of "invention" and "inventive step". It introduced a request-for-examination system and automatic publication after the prescribed period. It also reshaped several remedies and exceptions.[55]

For pharmaceutical law, one of the most important features of the 2002 amendment was the insertion of section 107A, which recognizes the so-called Bolar exception and parallel importation.[56] The Bolar provision permits acts reasonably related to the development and submission of information required under law, thereby enabling generic manufacturers to

[51] IP India, *History of Indian Patent System*.
[52] *The Patents (Amendment) Act, 1999*, No. 17 of 1999.
[53] Srividhya Ragavan, Patent Amendments in India in the Wake of TRIPS, *CASRIP Newsletter* (Winter 2001), available at: https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2760067_code367538.pdf?abstractid=2760067&mirid=1 (last visited on Apr. 9, 2026).
[54] *The Patents (Amendment) Act, 2002*, No. 38 of 2002, available at: https://ipindia.gov.in/frontend/pdf/patents/1_39_1_patent-amendment-act-2002.pdf (last visited on Apr. 9, 2026).
[55] *The Patents (Amendment) Act, 2002*, No. 38 of 2002.
[56] *The Patents Act, 1970*, No. 39 of 1970.

prepare for market entry before patent expiry. The parallel import limb recognizes that certain importation from authorized sources is not infringement. These features demonstrate that even in the midst of TRIPS alignment, India continued to preserve access-oriented flexibilities.[57]

The 2002 amendment also retained and updated compulsory licensing mechanisms. This continuity is significant. India was adapting to a new international patent order, but it was not abandoning the developmental insight that patent rights must remain subject to conditions of public use, affordability, and local relevance.

3. The Patents (Amendment) Act, 2005

The decisive transition occurred with the Patents (Amendment) Act, 2005, brought into force from 1 January 2005.[58] This amendment removed section 5 and thereby reintroduced product patents for pharmaceuticals and other technologies across the board. It also repealed the EMR regime and opened the mailbox applications to substantive examination.[59]

At first glance, the 2005 amendment seems to mark a complete departure from India's earlier patent philosophy. But that reading would be incomplete. The Act did indeed bring Indian law into formal compliance with the TRIPS obligation to provide product patents in all fields of technology.[60] Yet it also introduced or preserved safeguards that have become central to the distinctiveness of contemporary Indian patent law.

The most famous of these safeguards is section 3(d). The provision excludes from patentability the mere discovery of a new form of a known substance unless it results in the enhancement of the known efficacy of that substance.[61] This was widely understood as an anti-evergreening measure. In effect, Parliament sought to prevent pharmaceutical patentees from extending monopoly through insignificant modifications that did not produce real therapeutic advancement.[62]

The 2005 Act also preserved pre-grant and post-grant opposition, retained compulsory

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[57] Shamnad Basheer, India's Tryst with TRIPS: The Patents (Amendment) Act, 2005, 1(1) *Indian Journal of Law and Technology* 15 (2005), available at: https://docs.manupatra.in/newsline/articles/Upload/3EB650D0-BB14-48C0-AA47-B8AA992D5FF7.pdf (last visited on Apr. 9, 2026).

[58] *The Patents (Amendment) Act, 2005*, No. 15 of 2005, India Code, available at: https://www.indiacode.nic.in/repealedfileopen?rfilename=A2005-15.pdf (last visited on Apr. 9, 2026).

[59] IP India, *History of Indian Patent System*.

[60] WTO, *TRIPS Agreement, Article 27: Patentable Subject Matter*.

[61] *The Patents Act, 1970*, No. 39 of 1970.

[62] Shamnad Basheer, India's Tryst with TRIPS: The Patents (Amendment) Act, 2005, 1(1) *Indian Journal of Law and Technology* 15 (2005).

licensing, continued the Bolar exception and parallel imports, and inserted section 92A, which enabled compulsory licensing for the manufacture and export of patented pharmaceutical products to countries having insufficient or no manufacturing capacity, consistent with India's role in the global access-to-medicines debate.[63]

These features show that the 2005 amendment was not a surrender of Indian patent policy. It was a recalibration. India accepted the international requirement of product patents, but embedded that requirement within a domestic architecture still attentive to public health, competition, and misuse of monopoly.

VI. Section 3(d), *Novartis*, and the Post-TRIPS Identity of Indian Patent Law

No discussion of modern Indian patent law is complete without the Supreme Court's decision in *Novartis AG v. Union of India*.[64] The case concerned Novartis's claim for a patent over the beta crystalline form of imatinib mesylate, marketed as Glivec/ Gleevec. The legal issue turned centrally on section 3(d) of the Patents Act, 1970 as amended.

In a judgment delivered on 1 April 2013, the Supreme Court refused the patent. The Court held that the claimed invention did not satisfy the requirement of enhanced efficacy under section 3(d). In doing so, it treated section 3(d) not as an eccentric drafting anomaly, but as an integral part of India's legislative policy against evergreening.[65]

The judgment is important for at least three reasons. First, it confirmed that India's post-2005 patent regime, though TRIPS-compliant, would not mechanically replicate the maximalist patent standards favoured by originator pharmaceutical firms. Secondly, it vindicated Parliament's attempt to distinguish genuine therapeutic innovation from minor variations of known substances. Thirdly, it reaffirmed the long continuity between India's post-independence patent philosophy and its contemporary jurisprudence. The spirit of Ayyangar did not disappear in 2005; it survived in a new doctrinal form.[66]

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[63] *The Patents Act, 1970*, No. 39 of 1970.
[64] *Novartis AG v. Union of India & Ors.*, Civil Appeal Nos. 2706–2716 of 2013, decided on Apr. 1, 2013 (Supreme Court of India), available at: https://www.globalhealthrights.org/wp-content/uploads/2013/04/SC-2013-Novartis-AG-v.-Union-of-India.pdf (last visited on Apr. 9, 2026).
[65] *Novartis AG v. Union of India & Ors.*, Civil Appeal Nos. 2706–2716 of 2013, decided on Apr. 1, 2013 (Supreme Court of India).
[66] Shamnad Basheer, India's Tryst with TRIPS: The Patents (Amendment) Act, 2005, 1(1) *Indian Journal of Law and Technology* 15 (2005).

The broader significance of *Novartis* lies in the way it places Indian patent law within a socio-legal rather than purely formal frame. Patent law, the Court suggested, cannot be read in abstraction from access to medicines, the legislative history of the 2005 amendment, and India's role in supplying affordable drugs to the developing world.[67] Even after TRIPS, therefore, Indian patent law remains a site where innovation policy and social justice continue to encounter each other.

VII. A Comparative Reflection on the 1970, 1999, 2002 and 2005 Regimes

The movement from the 1970 Act to the amendments of 1999, 2002 and 2005 is often described as a simple shift from a generic-friendly model to a stronger patent regime. That description is partly correct but analytically too crude. The better way to understand the transition is to see four successive legal moments.

The first moment, represented by the 1970 Act, was developmental and strongly domestic in orientation. It rejected pharmaceutical product patents, privileged process innovation, and treated patent rights as instruments subordinate to access and industrial growth.[68]

The second moment, represented by the 1999 amendment, was transitional. India neither repudiated the 1970 vision nor fully embraced the TRIPS end-state. It created mailbox applications and EMRs while preserving the old structure for the time being.[69]

The third moment, represented by the 2002 amendment, was institutional and structural. It prepared the legal system for a new international order by standardizing term, adjusting definitions, improving procedures, and preserving key flexibilities such as Bolar and compulsory licensing.[70]

The fourth moment, represented by the 2005 amendment and later confirmed in *Novartis*, was one of selective compliance. India accepted product patents, but not without retaining a cluster of doctrines such as section 3(d), compulsory licensing, opposition, government use, parallel imports and section 92A, that expressed a continuing public-interest orientation.[71]

This reading is important because it resists two equally misleading narratives. One narrative

[67] *Novartis AG v. Union of India & Ors.*, Civil Appeal Nos. 2706–2716 of 2013, decided on Apr. 1, 2013 (Supreme Court of India).
[68] *The Patents Act, 1970*, No. 39 of 1970.
[69] *The Patents (Amendment) Act, 1999*, No. 17 of 1999.
[70] *The Patents (Amendment) Act, 2002*, No. 38 of 2002.
[71] *The Patents (Amendment) Act, 2005*, No. 15 of 2005.

says that India "abandoned" its patent philosophy in 2005. The other says that nothing substantial changed. Both are inaccurate. What changed was the formal scope of patentability, especially in pharmaceuticals. What endured was a deep legislative suspicion of monopoly unconnected to public benefit.

VIII. Conclusion

The history of Indian patent law is, in the end, a story about legal adaptation under changing political economies. The colonial statutes of 1856, 1859, 1872, 1883, 1888 and 1911 brought the architecture of modern patent protection to India, but they did so in a manner shaped by imperial priorities rather than indigenous innovation policy.[72] The post-independence period transformed the debate. Tek Chand and Ayyangar redefined patent law as a matter of national interest, industrial development, public welfare, and access to essential goods.[73] The Patents Act, 1970 then gave that philosophy legislative form.

TRIPS and WTO membership changed the legal environment irreversibly. India could no longer maintain a pharmaceutical patent regime wholly insulated from global trade rules.[74] Yet India did not respond by abandoning its legal identity. Through the amendments of 1999, 2002 and 2005, it moved toward treaty compliance while retaining significant public-interest safeguards.[75] That is why the contemporary law still bears traces of the older developmental tradition.

For legal scholarship, this history offers a larger lesson. Patent law in India has never been merely technical. At every stage, it has reflected deeper arguments about sovereignty, industrial policy, public health, and the social function of property. To read Indian patent law only as a branch of intellectual property doctrine is therefore to miss its constitutional and developmental significance. It is a field in which law has repeatedly been asked to answer a difficult question: how should a society reward invention without allowing the reward to defeat the larger public good?

[72] IP India, *History of Indian Patent System*.
[73] Bakshi Tek Chand et al., *Report of the Patents Enquiry Committee, 1948–50* (1950).
[74] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Apr. 15, 1994.
[75] Shamnad Basheer, India's Tryst with TRIPS: The Patents (Amendment) Act, 2005, 1(1) *Indian Journal of Law and Technology* 15 (2005).