

**NEXT IAS**

**DAILY EDITORIAL  
ANALYSIS**

*TOPIC*

---

**GLOBAL INTELLECTUAL PROPERTY ORDER:  
NEED FOR CONSISTENCY AND EQUITY IN  
ENFORCEMENT**

---

[www.nextias.com](http://www.nextias.com)

## GLOBAL INTELLECTUAL PROPERTY ORDER: NEED FOR CONSISTENCY AND EQUITY IN ENFORCEMENT

### Context:

- Recently, the **United States Trade Representative (USTR)** had initiated a **Section 301** investigation into Vietnam as it was designated as a '**Priority Foreign Country**' in the **Special 301 Report (2026)** on account of some issues related to intellectual property (IP) protection and enforcement.

### Global Intellectual Property Order

- The global intellectual property order consists of international laws, institutions and instruments that regulate the creation, protection and enforcement of **intellectual property rights (IPRs)**.
- Key Components:**
  - ♦ **TRIPS Agreement (WTO):** The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets minimal standards for IP protection among WTO members.
    - It includes patents, copyrights, trademarks, geographical indications and trade secrets.
  - ♦ **World Intellectual Property Organization (WIPO):** It is a UN specialised agency administering global IP treaties. It helps harmonise IP norms and innovations.
  - ♦ **Unilateral Trade Measures:** Tools such as USTR's Special 301 Report evaluate a country's IP regime and may result in trade investigations and sanctions.
- India continues to be listed as a Priority Watch List or Priority Foreign Country along with many developing countries.
- Such repeated categorization raises concerns about the standards for evaluating the country's compliance with IP regulations.

### WIPO Treaty On Intellectual Property, Genetic Resources and Associated Traditional Knowledge (2024)

- Patent applicants should provide details of the source of genetic resources used in invention applications.
- Disclosures should cover associated traditional knowledge.
- It increases transparency in the patent system.
- It aims to prevent incorrect patents due to appropriation of genetic resources.

### Section 301 Of USTR (US Trade Act of 1974)

- It is authorised to conduct investigations into and take measures against any foreign country which discriminates against US trade policies.
- The Special 301 report is issued annually and lists those countries whose protection of IP rights does not measure up to the US standards. Countries can be listed under:
  - ♦ **Priority Foreign Country (PFC):** This is the worst list that can result in investigations and sanctions.
  - ♦ **Priority Watch List (PWL):** Those countries that require close attention to resolve concerns about protection of IPRs.
  - ♦ **Watch List:** Countries with fewer concerns.

### Need For Uniformity in IP Enforcement

- Selective Scrutiny:** Many developing countries including **India, Vietnam, and Indonesia** are subjected to scrutiny.
  - ♦ However, similar scrutiny does not usually apply to developed economies in relation to issues such as **misappropriation of traditional knowledge (TK) and genetic resources**.

- **Changing Norms Need Balancing:** Recently adopted WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (2024) recognizes the requirement for transparency in patenting.
- **Equity Principle:** The credibility of the global IP regime calls for standards to be uniform; equal accountability of all the countries; and recognition of both private and community-based knowledge systems.

### Issues and Concerns Related to Global IP Order

- **Asymmetry Between Developed and Developing Countries:** The developed countries have better technological abilities and they dominate in patent ownership.
  - ♦ Developing countries end up becoming net technology importers and paying huge royalties.
- **Biopiracy and Misappropriation:** TK and biological resources of nations rich in biodiversity get commercialized through exploitation and lack of proper consent and benefit-sharing.
  - ♦ **Examples** include the controversy over **neem patent**, the **turmeric** wound healing patent case, and the dispute over **basmati rice patent**.
- **TRIPS-Plus Obligations:** Bilateral and regional trade agreements contain IP provisions going beyond TRIPS obligations.
  - ♦ This would lead to restrictions on the policy space in matters of public health and agriculture.
- **Effect on Development:** The excessive IP protection would lead to higher costs of medicines, seeds, and technology.
  - ♦ It could negatively impact the developmental priorities of low- and middle-income countries.
- **Insufficient Protection of Community Knowledge:** Patent regime traditionally has only protected the individual inventions.

### Concerns & Issues Specific to India

- **Biopiracy:** India has always raised examples where the traditional knowledge and biological resources had been exploited commercially without prior informed consent, acknowledgment of source and benefit-sharing.
- **Protection of Traditional Knowledge:** India has maintained that the indigenous communities are custodians of valuable knowledge systems but the existing IP regime has not taken into consideration their collective ownership.
- **Flexibility:** India has supported maintaining the TRIPS flexibilities concerning public health; food security; and affordable technology.

### India's Approach towards IP Enforcement

- **National Intellectual Property Rights (IPR) Policy, 2016:** According to DPIIT, the policy is designed to encourage creativity and innovation; entrepreneurship; build awareness on IPRs; develop effective IP administration and enforcement; and commercialize IP assets.
  - ♦ **Seven Pillars of the Policy:** Awareness, generation of IPRs, legal and legislative framework, administration and management, commercialization, enforcement and adjudication, and human resource development.
- **Traditional Knowledge Digital Library (TKDL):** It is set up for documentation of traditional medicinal knowledge. This helps patent examiners in different countries identify the prior art and prevent the wrong patents.
- **Enforcement Improvement:** IP Offices modernization; digital examination and faster examination processes; and special IP divisions in courts.
- **Legislative Balance:** India is striving to maintain balance between incentivizing innovation and welfare of the people.

**Way Forward: Towards Balanced IP Regime**

- **Uniform Application of IP Standards** in Developed and Developing Countries
- Implementation of **WIPO Treaty (2024)**
- Effective mechanism **against biopiracy and misappropriation;**
- **Equitable benefit-sharing** with the indigenous communities;
- Maintaining **TRIPS flexibilities** in matters of public health and development
- Conservation of biodiversity through innovation policy
- Recognition of **community-based knowledge systems** as well as private IP

**Daily Mains Practice Question**

[Q] Examine the need for consistency and equity in global intellectual property enforcement. Discuss India's concerns regarding biopiracy and traditional knowledge.

Source: BL

