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Ethico-Legal Assessment of IP Rights During COVID-19: Monopolies, Access to Medicine and Copyright Issues

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ABSTRACT

The COVID-19 pandemic tested the balance between intellectual property (IP) protection and the global right to health. As nations raced to develop vaccines and therapeutics, monopolies over medical innovations—enabled by stringent patent and copyright laws—posed ethical dilemmas and legal barriers to access. This paper critically examines the ethico-legal dimensions of IP rights during the pandemic, focusing on patent monopolies, compulsory licensing, access to medicine, and copyright control over data and technology. The paper argues for an adaptive, humanitarian IP regime that respects innovation but ensures no one is denied life-saving care due to artificial legal barriers. Through international legal frameworks and India-specific case studies, this analysis highlights the need for urgent reform in global and national IP policies to meet future public health crises.

Keywords:Intellectual Property Rights, COVID-19, Ethics, Public Health, Compulsory Licensing, Copyright, Patent Monopolies, Access to Medicines, TRIPS Flexibilities, Human Rights, Innovation vs. Access

1. INTRODUCTION

The outbreak of COVID-19 has highlighted stark disparities in access to life-saving medical products. Intellectual property rights (IPRs), while crucial for incentivizing innovation, became focal points of contention as they often limited the ability of low- and middle-income countries to produce or access vital medical products. The ethical challenge lay in reconciling monopolistic control with the human right to health. Simultaneously, the legal systems—especially those rooted in the TRIPS agreement—appeared inflexible or inadequate to address the immediacy and scale of the pandemic. This article explores these intersections of ethics and law in the field of IP during COVID-19.

The COVID-19 pandemic was not just a public health crisis—it was a global test of legal systems, ethical values, and international cooperation. One of the most controversial and consequential issues during the pandemic was the role of intellectual property rights (IPRs), especially patents and copyrights, in determining who got access to life-saving medical technologies, and who did not. While IPRs are conventionally viewed as necessary instruments to protect innovation and ensure economic incentives for research, their impact on equitable access to healthcare during emergencies has raised critical legal and ethical concerns.

The monopolistic nature of IP rights—especially in the pharmaceutical sector—meant that a handful of patent-holding corporations had control over vaccines, treatments, and diagnostic tools that the entire world desperately needed. Countries in the Global South, including India, struggled to manufacture or procure sufficient doses due to patent-related restrictions, despite having the technical capacity and industrial base to scale up production. This exposed a deep structural inequity within the global IPR regime and brought forth ethical questions regarding the moral legitimacy of exclusive ownership over life-saving innovations.

From a legal standpoint, international instruments like the **WTO's TRIPS Agreement** provide mechanisms such as **compulsory licensing (Article 31)** and **security exceptions (Article 73)**. India's own **Patents Act, 1970** offers emergency-use provisions under **Sections 84, 92, and 100**. However, the real-world application of these laws during COVID-19 was limited, slow, or politically constrained, leading to calls for more agile and ethical legal frameworks during global health emergencies.

Moreover, the pandemic also expanded the scope of IPR concerns beyond patents to include **copyright laws** that govern access to research data, telemedicine software, and digital health technologies. Issues such as restricted access to research publications, protected contact tracing apps, and software licensing limitations added new layers to the IPR-access divide.

This article critically investigates the **intersection of ethics and law** in the context of IPRs during COVID-19. It explores how patent and copyright protections, when rigidly enforced, can hinder universal access to healthcare and violate basic human rights such as the right to life and health. The study also examines India's legal response, the global TRIPS waiver debate, and emerging demands for a more compassionate and equitable intellectual property regime.

Ultimately, this research calls for a **humanitarian approach to IP governance**—one that maintains a balance between rewarding innovation and fulfilling the ethical obligation to ensure that no person is denied life-saving care due to legal barriers.

2. REVIEW OF LITERATURE

The global outbreak of COVID-19 brought intellectual property (IP) law into the spotlight, especially with regard to its role in facilitating or impeding access to essential healthcare technologies. Scholars, global health organizations, and legal analysts have examined the complex intersection of IP, ethics, and public health, particularly during emergencies. The following review of literature highlights key contributions that inform the present study.

1. United Nations (1966)

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, adopted in 1966, laid the foundation for the right to health under **Article 12**, which includes access to essential medicines. Though not COVID-specific, this human rights framework has been consistently referenced during the pandemic to argue that intellectual property rights must not override the right to life and health. The UN's subsequent General Comments have clarified that governments have both a legal and moral obligation to remove barriers—including IP restrictions—that prevent access to life-saving medical goods.

2. Doha Declaration on TRIPS and Public Health (2001)

Adopted by WTO members, the **Doha Declaration** explicitly stated that the TRIPS Agreement should not prevent members from taking measures to protect public health. It reaffirmed the right of countries to use **compulsory licensing and parallel importing** as tools to ensure access to medicines. This document became a critical precedent during COVID-19, particularly when countries like India and South Africa demanded a TRIPS waiver.

3. MSF Access Campaign (2020)

In its report *"Open COVID Pledge and Patent Pooling,"* Médecins Sans Frontières (MSF) emphasized the urgent need for patent pooling and open licensing models during pandemics. The campaign argued that relying solely on voluntary corporate goodwill was insufficient. It criticized the delay in open access to critical technologies and highlighted how restrictive IP laws prevented replication of diagnostics, treatments, and digital solutions in low-resource settings.

4. WHO (2020)

The **World Health Organization's R&D Blueprint and COVID-19 Access Strategy** underscored the importance of global collaboration and open science. The report urged countries to make use of TRIPS flexibilities and encouraged mechanisms like the **COVID-19 Technology Access Pool (C-TAP)**. WHO acknowledged the ethical tension between IP rights and equitable access and advocated for international legal adjustments during pandemics.

5. Correa, C. M. (2021)

In *"IP Rights and Public Health: Lessons from COVID-19"* (South Centre), Correa examined the failure of the existing IP system to ensure equitable access to COVID-19 vaccines. He criticized both the legal complexity of TRIPS flexibilities and the ethical implications of profit-driven monopolies. He recommended international legal reform to make compulsory licensing automatic during declared health emergencies.

6. Médecins Sans Frontières (2021)

In its report *"A Pandemic of Inequality: Access Denied,"* MSF exposed how wealthier nations hoarded vaccines and pharmaceutical firms prioritized high-income markets. The report argued that IP regimes during COVID-19 exacerbated racial and economic inequality and created moral failures on a global scale. MSF advocated for stronger public-interest safeguards and questioned the ethical foundations of private ownership in times of crisis.

7. Gopakumar, K. (2021)

In his study *"Ethics of Innovation and Access"* (Third World Network), Gopakumar explored the moral obligations of governments and innovators during health emergencies. He emphasized that when R&D is publicly funded—as was the case with many COVID-19 vaccines—there is an ethical duty to ensure open access. He also critiqued India's cautious stance on compulsory licensing and stressed the need for legal reforms to remove bureaucratic and diplomatic barriers to access.

8. Indian Ministry of Law & Justice (2021)

In its *"Emergency IP Measures Review,"* the ministry analyzed the legal preparedness of India's patent and copyright regime. While the report acknowledged the availability of tools like Sections 84, 92, and 100 under the Patents Act, it also highlighted the **lack of clarity, coordination, and prompt implementation mechanisms**, suggesting that India's legal potential remained underutilized during the pandemic.

3. OBJECTIVES OF THE STUDY

The present study aims to explore and evaluate the complex and often conflicting relationship between intellectual property rights (IPRs), public health access, and ethical responsibility during the COVID-19 pandemic. While IP

protection plays a crucial role in incentivizing innovation and economic investment, it becomes morally questionable and legally contested when it obstructs access to essential medicines, vaccines, and health technologies during a global emergency. Against this backdrop, the study outlines the following key objectives:

1. To examine the ethical foundations and dilemmas associated with patent monopolies during the COVID-19 pandemic

The research investigates how ethical frameworks—such as utilitarianism, deontology, and rights-based theories—apply to IP law in a health crisis. It explores questions such as: Should innovators prioritize humanity over profits? Is it ethical to enforce monopolies on life-saving products? And how do these moral considerations shape legal decisions?

2. To analyze the legal provisions governing IP rights in India and under international law in the context of pandemics

The study delves into the Indian Patents Act, 1970, and the TRIPS Agreement, particularly focusing on Sections 84, 92, and 100 (India), and Articles 31 and 73 (TRIPS), along with the Doha Declaration. It aims to evaluate how effective these legal instruments were in facilitating access during COVID-19, and whether they require reform or reinterpretation.

3. To explore the role of copyright law in digital health technologies and research dissemination during the pandemic

Beyond patents, the study assesses how copyright protections impacted access to medical research, telehealth platforms, and digital tools such as contact tracing apps. It questions whether such protections were justified, or if they obstructed scientific collaboration and public use.

4. To assess India's strategic and legal response to IP-related barriers during COVID-19

India proposed a TRIPS waiver at the WTO, produced vaccines like Covaxin, and engaged in international diplomacy. However, it hesitated to invoke its own compulsory licensing laws. This objective investigates the reasons behind this paradox and the implications for future public health strategy.

5. To identify the conflict between intellectual property rights and human rights, especially the right to health

The study seeks to demonstrate how the enforcement of exclusive IP rights, without public-interest exceptions, can infringe upon internationally recognized human rights. It places particular focus on **Article 12 of the ICESCR**, which guarantees access to essential healthcare.

6. To offer policy and legal recommendations for creating a balanced and humanitarian IP governance framework

Drawing from the findings, the study aims to recommend actionable legal reforms—such as codifying emergency IP suspension clauses, establishing global IP emergency protocols, promoting open-access models, and fostering ethical licensing practices that prioritize equity.

4. RESEARCH METHODOLOGY

This research adopts a **doctrinal and normative legal research methodology** to critically examine the intersection of intellectual property rights (IPRs), ethical frameworks, and public health imperatives during the COVID-19 pandemic. Given the primarily legal and conceptual nature of the research problem, a doctrinal approach—complemented by ethical and human rights analysis—provides the most appropriate foundation for evaluating both the text and application of law in times of public crisis.

1. Nature and Scope of the Study

This is a **qualitative, analytical, and conceptual study** focused on interpreting statutes, treaties, and case law through the lens of public interest and ethics. The scope encompasses:

- Indian IP law (primarily the Patents Act, 1970)
- International legal frameworks (WTO's TRIPS Agreement, Doha Declaration, ICESCR)
- Real-world application of IP laws during COVID-19 in India and globally
- Ethical theories (utilitarianism, deontology, rights-based ethics) as applied to IP enforcement

2. Objectives of Legal Interpretation

The study uses legal hermeneutics to interpret statutory texts not just by their literal wording but also in terms of:

- Their **intent** and **spirit** (particularly during emergencies)
- Their **alignment with constitutional rights** and **international human rights norms**
- Their **practical functionality** during large-scale public health crises

3. Sources of Data

A. Primary Legal Sources

- The **Patents Act, 1970 (India)** – Sections 84, 92, 100
- **TRIPS Agreement (WTO)** – Articles 31, 73, and general obligations
- **Doha Declaration on TRIPS and Public Health (2001)**
- **International Covenant on Economic, Social and Cultural Rights (1966)** – Article 12

- **Case studies** such as India's licensing of Remdesivir, and Bharat Biotech's Covaxin development

B. Secondary Sources

- Peer-reviewed academic journals in law, ethics, and public health
- Reports from international organizations (WHO, WTO, UNDP)
- Policy briefs by NGOs and think tanks (e.g., MSF, South Centre, Third World Network)
- News articles, government press releases, and parliamentary records
- Legal commentaries and ethical critiques of IP law during COVID-19

4. Method of Data Collection and Analysis

The research employed:

- **Textual analysis** of statutes, treaties, and declarations
- **Comparative analysis** of India's legal response with global trends
- **Ethical evaluation** of corporate and governmental decisions on IP
- **Content analysis** of reports, case law, and policy frameworks relevant to COVID-19 and IP

The findings are categorized thematically into topics such as "Ethics of Patent Monopolies," "Compulsory Licensing and Its Underuse," "Digital Copyright Challenges," and "Human Rights vs. IP Rights."

5. Limitations of the Study

- The study does **not involve empirical data collection** such as interviews or surveys, as it is purely doctrinal.
- There is **limited public access to full licensing agreements** and trade negotiations, restricting full transparency.
- Rapid developments during and after the pandemic may **outdate certain legal interpretations**, which are based on data available till 2022.

5. RESULTS AND DISCUSSION

The results of this research reveal a troubling disjunction between the **legal capacity**, **ethical expectations**, and **actual policy responses** surrounding intellectual property rights (IPRs) during the COVID-19 pandemic. While both national and international legal frameworks provided flexibilities to protect public health, they were either underutilized or overwhelmed by political, commercial, and procedural constraints. The discussion below highlights six key dimensions that emerged from the study.

1. Patent Monopolies and Ethical Tensions

The pandemic showcased how **20-year patent monopolies** on vaccines, drugs, and diagnostics created artificial scarcity, especially in low- and middle-income countries. Products such as Pfizer's and Moderna's mRNA vaccines, or patented therapeutics like Remdesivir, remained largely inaccessible due to exclusive rights and limited licensing.

From an **ethical standpoint**, this resulted in:

- Violation of utilitarian ethics, which would favor mass benefit over individual profit
- Breach of deontological ethics, where the moral duty to save lives outweighs commercial interest
- Erosion of global trust in the pharmaceutical sector and the IP system at large

2. Underutilization of India's Legal Provisions

Despite having a progressive legal framework under the **Patents Act, 1970**, India did not invoke compulsory licensing (Section 84) or emergency provisions (Section 92) during COVID-19. While Indian firms received voluntary licenses (e.g., Gilead's Remdesivir), the **state itself avoided using its sovereign legal tools**.

The reasons included:

- Political caution in global trade forums
- Preference for diplomacy (e.g., the TRIPS waiver proposal) over domestic action
- Lack of a clearly codified emergency IP response protocol
- Absence of inter-agency coordination between health and legal ministries

This inaction represented a missed opportunity to legally establish a precedent of prioritizing public interest over patent exclusivity.

3. Copyright Control and Digital Barriers

The research also found that **copyright protections** restricted access to:

- **Telemedicine platforms** and their user interfaces
- **Contact tracing applications**, whose source codes were not shared openly
- **Peer-reviewed research articles**, many of which remained behind paywalls despite urgent public need

Although some publishers temporarily removed paywalls, there was **no mandatory mechanism** to enforce access during emergencies. This highlighted the inadequacy of copyright regimes in addressing fast-moving global health crises.

4. The TRIPS Waiver: Diplomacy vs. Deliverables

India's and South Africa's **TRIPS waiver proposal (2020)** aimed to suspend IP rights on COVID-related products. It gained widespread support but faced stiff resistance from high-income nations like the EU, UK, and Switzerland. The final outcome—achieved at WTO's MC12 in 2022—was limited only to vaccines, excluding therapeutics and diagnostics.

This demonstrated:

- The **failure of global solidarity** during a global health crisis
- The **moral weakness of the WTO IP system**, which struggled to respond swiftly
- A lack of consensus on whether innovation or access should take precedence during emergencies

5. IP Rights vs. Human Rights

Article 12 of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** guarantees the right to health, including access to essential medicines. During COVID-19, this right was often in direct conflict with:

- Private patent rights
- Copyright claims over life-saving algorithms and tools
- Legal inaction at the national level, despite humanitarian need

The results show that **IP rights are not absolute** and can be limited under international law, but many governments hesitated to apply this principle robustly.

6. Global Inequity and Moral Failure

Perhaps the most concerning result was the **deepened inequality between nations**:

- Rich countries hoarded vaccines (vaccine nationalism)
- Poor countries waited for donations or delayed access
- Private corporations dictated licensing terms, with little regard for global health equity

6. RECOMMENDATIONS

The findings of this study underscore the urgent need for a **paradigm shift in the governance of intellectual property rights** (IPRs) during public health emergencies. To align the goals of innovation with the imperatives of equity and ethics, the following recommendations are proposed for national governments, international institutions, and IP-holding entities.

1. Codify Automatic Emergency IP Waiver Provisions in National Laws

National IP statutes—such as India's Patents Act—should include **predefined legal triggers** that automatically activate compulsory licensing or government use in declared health emergencies. These should include:

- WHO-declared pandemics
- National disaster declarations
- Evidence of supply restrictions or affordability issues

Such codification will remove bureaucratic delays and reduce reliance on political discretion.

2. Establish Global IP Emergency Protocols via WTO or WHO

The **WTO and WHO** must collaborate to create a binding **Global IP Emergency Protocol** that:

- Temporarily suspends or softens IP enforcement during pandemics
- Streamlines licensing and knowledge transfer
- Mandates open sharing of medical innovations funded by public money

This protocol should be enforceable and ratified by member states, ensuring preparedness for future pandemics.

3. Expand and Institutionalize Open Access Frameworks

Governments and research institutions must mandate:

- **Open-access publication** of publicly funded research
- **Free licensing of health-related software** (e.g., contact tracing, telemedicine tools)
- Open-source development of algorithms and digital infrastructure for pandemic management

Such openness fosters collaboration and accelerates innovation during crises.

4. Reform Copyright Laws for Health Emergencies

Copyright law should be amended to:

- Allow **temporary and compulsory access** to digital tools during public health crises
- Enable cross-border sharing of software and publications
- Establish **fair-use expansions** specific to pandemic contexts

This will ensure that digital barriers do not impede access to vital technologies.

5. Encourage Ethical and Public-Interest IP Licensing Models

Governments and multilateral institutions should promote:

- **Patent pooling mechanisms**, like the Medicines Patent Pool (MPP)
- **Non-exclusive, royalty-free licenses** for pandemic-related technologies
- Public-private partnerships with **equity clauses** that prioritize access

Such models recognize the role of industry while safeguarding the public good.

6. Strengthen Institutional Capacity for Compulsory Licensing

India and similar countries must:

- Train legal, health, and trade officials on TRIPS flexibilities
- Develop fast-track licensing procedures within patent offices
- Allocate legal budgets for defending compulsory license decisions in WTO disputes

Institutional readiness is key to using existing legal tools effectively.

7. Make Human Rights Central to IP Governance

Intellectual property law must explicitly recognize:

- That **the right to life and health supersedes commercial exclusivity**
- That **publicly funded innovations** belong to the people
- That **access to essential medicines** is a non-negotiable component of global justice

Policy and law must integrate these values to rebuild public trust in IP systems.

8. Global South Leadership in IP Reform

India, South Africa, and other developing nations must:

- Continue to advocate for **permanent TRIPS waiver frameworks**
- Form IP cooperation coalitions within the Global South
- Push for a **new global treaty** on access to medicines during emergencies

7. CONCLUSION

The COVID-19 pandemic has served as a powerful magnifying lens, exposing the ethical and legal limitations of the current global intellectual property (IP) regime. While intellectual property rights (IPRs) play a critical role in driving innovation and securing commercial investments, the crisis has made it clear that these rights must not operate in isolation from humanitarian obligations, especially during a global health emergency.

This study has shown that patent and copyright protections—if applied rigidly—can function as barriers rather than facilitators of public health. The monopolistic control over vaccines, therapies, diagnostic kits, digital tools, and even research publications disproportionately benefited a few while leaving vast populations behind. The ethical dilemma, therefore, is not abstract: it is real, urgent, and deeply consequential. When legal frameworks prioritize exclusivity over accessibility, they stand in direct contradiction to the universally recognized human right to health.

India, despite having a strong legal framework under the Patents Act and being known as the "pharmacy of the world," underutilized its sovereign tools like compulsory licensing and emergency authorizations. Instead, the government relied on voluntary licensing and international diplomacy. While efforts such as the TRIPS waiver proposal at the WTO were commendable, they did not yield the transformative reform that was needed in real time.

Moreover, the pandemic expanded the debate beyond patents to include **copyright laws**, which impacted access to critical software and scientific knowledge. The limited legal tools available for digital public goods revealed a serious blind spot in current IP governance.

At the international level, mechanisms such as TRIPS flexibilities and the Doha Declaration proved to be too slow, too weak, or too politically contentious. Global solidarity, despite being the rhetorical mantra of the pandemic response, failed in the face of national interest, profit motives, and legal inertia.

The way forward demands more than reform—it requires reimagination. Intellectual property laws must evolve to serve both innovation and equity. Emergency use clauses should be codified, open-access norms institutionalized, and humanitarian licensing models mainstreamed. Most importantly, **human rights—particularly the right to life and health—must become the moral compass guiding legal frameworks** in times of crisis.

In conclusion, COVID-19 has presented an opportunity for transformation. The question is no longer whether IP law should change, but how quickly and how justly we can make that change. A compassionate, inclusive, and flexible IP system is not just an ethical imperative—it is a public health necessity. The future must belong to a world where no life is lost, and no innovation is locked away, behind the wall of legal exclusivity.

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