THE PRIVACY-ENFORCEMENT PARADOX: NAVIGATING PHARMACEUTICAL TRADEMARK PROTECTION UNDER INDIA'S DPDP ACT, 2023

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ABSTRACT

The trajectory of Indian trademark law within the pharmaceutical industry represents a complex balance between enforcing private intellectual property rights and safeguarding public health. This paper traces the legislative and judicial evolution of pharmaceutical trademarks from the pre-independence common-law era, through the paradigm-shifting Trade Marks Act of 1999, up to the contemporary digital landscape. It highlights how Indian courts have progressively established a "strict scrutiny" doctrine and an "imperfect memory" test—most notably in the landmark Cadila judgment which lower the threshold for proving deceptive similarity due to the potentially life-threatening consequences of medication errors. The analysis explores critical statutory developments, including the expanded protection of non-conventional marks such as shape and colour trade dress, the prohibition against monopolizing International Non-Proprietary Names (INNs), and the strategic reliance on trademarks following the denial of patent monopolies as seen in the Novartis case. Furthermore, the paper investigates modern challenges introduced by the digital era, such as intermediary liability for e-pharmacies under the IT Act, "algorithmic passing off," and the privacy-enforcement paradox created by the Digital Personal Data Protection (DPDP) Act, 2023. Ultimately, the study concludes that while the Indian legal framework robustly prioritizes consumer safety, it must continuously evolve alongside technological advancements like AI and blockchain to maintain supply chain integrity and effectively combat digital infringement.

Keywords: Pharmaceutical Trademarks, Indian Trademark Law, Public Health, Deceptive Similarity, Algorithmic Passing Off.

1.1 Introduction

The trajectory of trademark law in India, particularly when viewed through the prism of the pharmaceutical industry, represents a complex negotiation between the enforcement of private proprietary rights and the safeguarding of public health. Unlike in other sectors, where a trademark primarily serves as a badge of origin or a tool for marketing distinctiveness, in the pharmaceutical domain, the trademark assumes the critical function of a safety mechanism. The branding of medicinal products ensures that physicians prescribe, pharmacists dispense, and patients consume the correct therapeutic formulation. Consequently, the evolution of trademark jurisprudence in India has been inextricably linked to the exigencies of the healthcare sector, necessitating a legal framework that is responsive to the high stakes of medication errors.

This chapter provides an exhaustive exegesis of the evolution of Indian trademark law, tracing legislative and judicial developments from the pre-independence common-law era to the contemporary digital age. It posits that the Indian judiciary and legislature have progressively carved out a *sui generis* status for pharmaceutical trademarks, characterised by a "strict scrutiny" doctrine that prioritises consumer safety over commercial equity. The analysis begins with the foundational deficits of the early statutory regimes, moves through the paradigm-shifting Trade Marks Act of 1999, and culminates in an examination of the disruptive impact of the Digital Personal Data Protection Act, 2023, and the proliferation of online pharmacies. By dissecting key provisions, such as Section 13 (prohibition of chemical names) and Section 29 (infringement), and analysing landmark rulings, including *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* and *Novartis AG v. Union of India*, this chapter underscores the dynamic interplay between intellectual property protection and the fundamental right to health.

1.2 Historical Development: From Common Law to the Trade Marks Act, 1999

1.2.1 The Pre-Independence Era: Common Law and the 1940 Act

Before 1940, the Indian legal landscape regarding trademarks was characterised by a conspicuous absence of specific statutory legislation.[1] The protection of commercial identifiers was governed entirely by the principles of common law, specifically the tort of "passing off." In this nascent era, pharmaceutical proprietors were compelled to rely on equity courts to seek

[1] Komal Raval, "Indian Trademark Law" *Excelon IP* (2018).

remedies against competitors who misrepresented their goods. The burden of proof in such everyday law actions was exceedingly onerous; a plaintiff was required to demonstrate not merely the similarity of the rival marks, but also the existence of established goodwill and reputation, a threshold that proved particularly challenging for emerging domestic pharmaceutical entities attempting to compete with established colonial incumbents.[2]

The absence of a centralised registration system fostered significant market uncertainty. Without a public register to verify the existence of prior rights, pharmaceutical manufacturers faced the perpetual risk of launching a drug only to be met with a common-law injunction based on previous use. Recognising this commercial precariousness, the British colonial administration enacted the Trade Marks Act of **1940**.[3] Modelled closely on the United Kingdom's Trade Marks Act of 1938, this legislation introduced the concept of "registered" trademarks for the first time in Indian legal history. The 1940 Act provided *prima facie* evidence of validity to registered marks, theoretically simplifying enforcement. However, its colonial origins meant that it was transposed mainly from English law without adequate adaptation to the specific linguistic and socio-economic realities of the Indian market.

1.2.2 The Trade and Merchandise Marks Act, 1958: A Mixed Legacy

Following independence, the imperative to consolidate and modernise commercial laws led to the repeal of the 1940 Act and the enactment of the **Trade and Merchandise Marks Act, 1958**.[4] This legislation governed the Indian trademark landscape for over four decades. It introduced significant procedural improvements, including the criminalisation of trademark falsification, a provision of paramount importance in combating counterfeit medicines.

However, for the expanding pharmaceutical industry, the 1958 Act presented substantial limitations. The definition of a "trademark" under this regime was rigid, restricted primarily to marks applied to "goods." This excluded the service sector entirely, leaving the burgeoning hospital and healthcare services industry without statutory brand protection.[5] Furthermore, the 1958 Act offered limited protection for "well-known" marks that had not yet been used in India, a gap that became increasingly problematic as the Indian economy began to open up.

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[2] *Id.*
[3] The Trade Marks Act, 1940 (India).
[4] The Trade and Merchandise Marks Act, 1958 (India).
[5] *Supra* note 49.

Crucially, the 1958 Act struggled to address the complex issue of genericism in pharmaceutical naming conventions. The distinction between a proprietary brand name and a descriptive chemical term was often blurred, leading to extensive litigation over whether a mark had become *publici juris* (of public right). The landmark case of *Amritdhara Pharmacy v. Satya Deo Gupta*[6] During this era, the judicial struggle to determine "deceptive similarity" between medicinal names (Amritdhara vs. Lakshmandhara) highlighted the judicial struggle to determine "deceptive similarity" between medicinal names (*Amritdhara* vs. *Lakshmandhara*), ultimately laying the groundwork for the "imperfect memory" test that would later become central to pharmaceutical trademark law.

1.2.3 The TRIPS Agreement and the Paradigm Shift

The catalyst for the most significant overhaul of Indian trademark law was India's accession to the World Trade Organisation (WTO) and the obligations it created under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The globalisation of trade mandated harmonisation of intellectual property standards, requiring India to broaden the scope of protectable subject matter and strengthen enforcement mechanisms.[7]

For the pharmaceutical sector, the post-TRIPS era signalled a dual transformation. Indian companies, evolving from reverse-engineering generics manufacturers to global innovators, sought robust protection for their brands in international markets. Simultaneously, multinational corporations demanded more vigorous domestic enforcement against infringement and dilution. The existing 1958 framework was deemed insufficient to accommodate these new realities, particularly with respect to "non-conventional" trademarks such as pill shapes, colour combinations in packaging, and the protection of service marks for healthcare providers. This legislative imperative culminated in the enactment of the **Trade Marks Act, 1999**, which received presidential assent on December 30, 1999, and came into force on September 15, 2003.[8]

1.3 The Trade Marks Act, 1999: A Pharmaceutical Analysis

The Trade Marks Act, 1999 (TMA 1999) represents a watershed moment in Indian IP

[6] *Amritdhara Pharmacy v. Satya Deo Gupta*, AIR 1963 SC 449.
[7] 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.
[8] The Trade Marks Act, 1999 (India).

jurisprudence. It not only aligned Indian law with global standards but also introduced specific provisions that have had profound implications for the pharmaceutical industry.

1.3.1 Section 2(1)(zb): The Expansion of the "Trademark" Definition

One of the most radical departures from the 1958 regime was the redefinition of trademark law. Section 2(1)(zb) of the TMA 1999 defines a trademark as "a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others".[9] Crucially, this definition was expanded to explicitly include "shape of goods, their packaging and combination of colours".

Implications for Pharmaceutical Trade Dress:

This expansion legalised the registration of nonconventional marks, a development of immense strategic value for pharmaceutical companies.

1. **Shape Marks:** Under the previous regime, the distinctive shape of a tablet (e.g., a heart-shaped pill for cardiovascular therapy) faced hurdles in registration. The 1999 Act permits such registration, provided that the shape is not purely functional. This caveat, enshrined in Section 9(3), prevents the monopolisation of shapes that result from the nature of the goods or are necessary to obtain a technical result.[10] For instance, a round pill shape might be deemed functional for ease of swallowing, whereas a unique, non-functional geometric configuration could be trademarked.

2. **Colour Combinations:** In a country with varying literacy levels, patients often rely on the visual appearance of medicine packaging, the "red and white capsule" rather than the brand name. The inclusion of "combination of colours" under Section 2(1)(zb) enables pharma companies to protect their trade dress statutorily. This reduces reliance on the common-law tort of passing off, which imposes a higher evidentiary burden to prove reputational harm.[11]

3. **Non-Conventional Frontiers:** While sound marks have been registered in other sectors, the pharma industry is exploring the boundaries of this provision. For example,

[9] The Trade Marks Act, 1999, s. 2(1)(zb).
[10] The Trade Marks Act, 1999, s. 9(3).
[11] *Cipla Limited v. M.K. Pharmaceuticals*, 2008 (36) PTC 166 (Del).

distinctive sounds associated with digital health applications, or specific "clicks" of a medical device, could be protected, provided they meet the criteria for distinctiveness and graphical representation.[12]

1.3.2 Section 13: The Prohibition of Chemical Names

Section 13 of the TMA 1999 is a provision specifically tailored to the chemical and pharmaceutical sectors, reflecting a legislative intent to prevent the privatisation of public scientific language. It prohibits the registration of a trademark if it consists of a word that is the "commonly used and accepted name of any single chemical element or single chemical compound".[13]

The INN Protection Mechanism:

Furthermore, Section 13(b) explicitly bars the registration of names declared by the World Health Organisation (WHO) as **International Non-Proprietary Names (INNs)** or names that are "deceptively similar" to them.[14] The rationale is grounded in public safety and competition policy. If a single entity were allowed to trademark a generic name like "Paracetamol" or "Ibuprofen," it could effectively block competitors from marketing the same drug, even after the patent on the molecule has expired.

Judicial Interpretation: The *Aceclofenac* Precedents:

The courts have interpreted Section 13 rigorously to ensure that even subtle variations of INNs are not monopolised, and, in cases involving the drug *Aceclofenac*, the Bombay High Court addressed the issue of marks derived from INNs. In *Aristo Pharmaceutical Pvt. Ltd. v. Healing Pharma India Pvt. Ltd.*, where a plaintiff used the mark "ACECLO" (derived from Aceclofenac) and sued a defendant for using "ACECLOHEAL," the court held that since the rival marks were both derived from a common generic source (the INN), the plaintiff could not claim exclusivity over the "ACECLO" component.[15] The usual test of deceptive similarity was modified; the court looked at the *non-generic* elements (the suffix "HEAL" vs. the absence

[12] Ishika Soni, "Beyond the Ordinary: The Rise in Use of Non-Conventional Trademarks in Pharmaceuticals Industry" *IP & Legal Filings* (2020).
[13] The Trade Marks Act, 1999, s. 13.
[14] *Id.* at s. 13(b).
[15] *Aristo Pharmaceutical Pvt. Ltd. v. Healing Pharma India Pvt. Ltd. & Others*, Notice of Motion No. 343 of 2017 in Suit No. 130 of 2017 (Bom HC).

thereof) and the overall get-up. The court affirmed that Section 13's prohibition extends to "clipped versions" of INNs if the resulting mark remains deceptively similar to the original generic name.[16]

1.3.3 Section 29: Infringement and the Doctrine of Consequences

Section 29 of the TMA 1999 defines the circumstances constituting infringement of a registered trademark. It covers situations where a mark is identical or similar to a registered mark and is used in relation to identical or similar goods, leading to a likelihood of confusion (Section 29(1) and (2)).[17] It also introduces protection against dilution for well-known marks under Section 29(4).

The "Strict Scrutiny" Standard in Pharma:

In the context of pharmaceuticals, the judicial application of Section 29 is heavily influenced by the potential consequences of confusion. Unlike disputes involving luxury handbags or confectionery, where consumer confusion results in mere economic loss, confusion in the pharmaceutical sector can lead to adverse drug reactions, failure of treatment, or even death. Consequently, courts have established a "lower threshold of confusion" for pharma cases. The plaintiff need not prove *actual* deception; the mere *likelihood* of confusion is sufficient to trigger liability Cadila *Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73.

Verbal Infringement (Section 29(9)):

Section 29(9) explicitly states that the distinctive elements of a registered trademark can be infringed by their "spoken use".[18] This provision is particularly relevant to the Indian pharmaceutical market, where medicines are frequently ordered verbally, over the counter, or by telephone. The phonetic similarity between two drug names (e.g., *Amoxil* vs. *Amox*) becomes a critical factor in infringement analysis, as a pharmacist mishearing a name in a noisy environment could lead to the dispensing of the wrong medication.

[16] *Id.*; see also "Trademarks: Even 'clipped' version of INNs barred by Section 13 of Trade Marks Act" *LKS Law* (2018).
[17] *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73.
[18] The Trade Marks Act, 1999, s. 29(9).

1.4 Judicial Evolution: Landmark Cases and Jurisprudential Shifts

While the statutory framework provides the skeleton of trademark law, the "flesh and blood" of pharmaceutical jurisprudence has been supplied by a proactive judiciary. Indian courts have progressively distanced themselves from stricter English precedents that assumed a high degree of care among medical professionals, opting instead for a pro-consumer, public-health-centric approach that acknowledges the realities of the Indian healthcare system.

1.4.1 Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd. (2001)

The Supreme Court's judgment in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* is arguably the most significant precedent in Indian pharmaceutical trademark law.[19] The dispute concerned the rival marks "Falcitab" and "Falcigo", both used for drugs that treat Falciparum malaria.

Rejection of the "Sophisticated Consumer" Myth:

The lower courts had denied an injunction, reasoning that since the drugs were Schedule L drugs (sold only to hospitals and clinics), they would be handled by trained medical professionals who were unlikely to be confused. This reasoning relied heavily on the 1958 Act's principles and English precedents, which assumed a high standard of care among doctors and pharmacists. The Supreme Court decisively overturned this approach. It took judicial notice of the specific conditions in India, including varying levels of infrastructure, a high patient-to-doctor ratio that puts pressure on professionals, and the widespread practice of dispensing medicines by non-pharmacists.[20]

The "Imperfect Memory" Test:

The Apex Court established that the consumer, even a medical professional, should not be viewed as an expert with a photographic memory, but as a person of "average intelligence and imperfect memory." In the high-stress environment of a hospital or a busy pharmacy, errors are possible. Therefore, the standard for "deceptive similarity" in pharmaceuticals must be stricter

[19] *Supra* note 65.
[20] *Id.* at para 33.

than in other sectors.[21]

Factors for Determination:

The Court laid down a comprehensive set of factors for determining deceptive similarity in pharma cases:

- The nature of the marks (word, label, composite).
- The degree of resemblance (phonetic, visual, and conceptual).
- The nature of the goods (medicines).
- The similarity in nature, character, and performance of the drugs.
- The class of purchasers (doctors, chemists, patients).
- The mode of purchasing (prescription vs. over-the-counter).

The Ratio:

The ruling effectively reduced the evidentiary burden for plaintiffs in pharmaceutical patent infringement suits. It established that the "Schedule H" (prescription-only) status of a drug is not a sufficient Defence against infringement, as prescriptions can be misread, illegible, or dispensed without verification. The paramount consideration is the "severity of consequences," justifying a lesser quantum of proof for the plaintiff.[22]

1.4.2 Novartis AG v. Union of India (2013): The IP Intersection

Although *Novartis AG v. Union of India* is widely regarded as a patent law landmark on Section 3(d) of the Patents Act (preventing the "evergreening" of patents), its implications extend profoundly into trademark law.[23]

From Patent Monopolies to Brand Fortresses:

In this case, the Supreme Court rejected Novartis's patent application for the beta-crystalline form of Imatinib Mesylate (Glivec), ruling that the modification did not satisfy the requirement

[21] *Id.* at para 35.
[22] *Id*
[23] *Novartis AG v. Union of India*, (2013) 6 SCC 1.

of enhanced therapeutic efficacy.[24] This denial of patent protection highlighted a critical strategic pivot for pharmaceutical companies. When the patent wall falls (or is never built), the trademark wall becomes the primary line of Defence. Denied a patent monopoly on the molecule, companies such as Novartis increasingly rely on the strength of their brands (e.g., "Glivec") and their trade dress (shape, colour, packaging) to maintain market exclusivity and prevent generic competitors from capitalising on the originator's goodwill.

Trademark Implications:

This shift is evident in subsequent litigation, such as Novartis AG v. Crest Pharma Pvt. Ltd., where the Delhi High Court protected the trademark "Secef" against the mark "Cecef".[25] The court's willingness to grant injunctions in trademark cases serves as a counterbalance to the strict patent regime, ensuring that while the *molecule* may be generic, the *brand* remains protected against deception. The *Novartis* jurisprudence thus underscores the intersectionality of IP rights. As Section 3(d) narrows patentability, Sections 29 (infringement) and passing-off actions become robust tools for protecting pharmaceutical innovation and market share.[26]

1.4.3 Sun Pharma v. Glenmark: The "Dominant Feature" Test

In the recent dispute between *Sun Pharma Laboratories Ltd.* and *Glenmark Pharmaceuticals Ltd.* regarding the marks "ISTAMET" and "INDAMET," the courts applied the "dominant feature" test to composite marks.[27] Both drugs contained the active ingredient Metformin, leading to the common suffix "MET." The core legal question was whether the prefixes "ISTA" and "INDA" were sufficiently distinct to prevent confusion.

The court granted an injunction, reiterating the *Cadila* principle that even minor similarities in pharmaceuticals can be fatal. While the "anti-dissection" rule generally requires marks to be compared as a whole, the court held that the "dominant" part of the mark (often the prefix in a salt-derived name) is what creates the initial commercial impression. Since "MET" was descriptive of the salt, the consumer's focus would shift to the prefixes, which were found to be phonetically deceptively similar.[28] This case reinforced the judiciary's refusal to allow the

[24] *Id.*
[25] *Novartis AG v. Crest Pharma Pvt. Ltd.*, 2009 (41) PTC 57 (Del).
[26] Frederick M. Abbott, "The Judgment in Novartis v. India: What the Supreme Court of India Said" *IP Watch* (2013).
[27] *Sun Pharma Laboratories Ltd. v. Glenmark Pharmaceuticals Ltd.*, 2023 SCC OnLine Del 6220.
[28] *Id.*

"crowded field" Defence (where a defendant argues that many marks use the same suffix) to justify a confusingly similar name in the high-risk diabetes segment.

1.4.4 Shape and Colour Mark Litigation

The 1999 Act's inclusion of shapes and colours has led to specific litigation over the "look and feel" of medicines, often referred to as "trade dress."

- **Cipla Limited v. M.K. Pharmaceuticals (2007):** The Delhi High Court addressed the issue of a generic manufacturer copying the oval orange shape of a tablet. The court held that the nature of the drug often dictates the shape and colour of a tablet or is common to the trade. Unless the plaintiff can prove that the specific combination has acquired "secondary meaning" pointing *exclusively* to them, they cannot monopolise standard shapes or colours.[29] This ruling serves as a check against "trademark evergreening," ensuring that functional or common trade dress elements remain available to all generic manufacturers once the patent expires.

- **Seven Seas Technologies:** While primarily a tax dispute regarding software royalties, the principle of "substance over form" cited in *Seven Seas Technologies Ltd. v. Commissioner*[30] resonates in pharmaceutical trademark licensing. It suggests that courts will look beyond the superficial labelling of an agreement to the actual nature of the rights transferred, a principle increasingly relevant as pharmaceutical companies enter into complex co-marketing and trademark licensing agreements to expand their reach in the Indian market.

1.5 Digital-Era Updates: The IT Act and Data Protection

The digitisation of the healthcare supply chain, manifested in the rise of e-pharmacies, telemedicine platforms, and health apps, has introduced new dimensions to trademark infringement, necessitating a complex integration of the **Information Technology Act, 2000 (IT Act)** and the **Digital Personal Data Protection Act, 2023 (DPDP Act)**.

[29] *Supra* note 59.
[30] *Seven Seas Technologies Ltd. v. Commissioner of Domestic Taxes*, Income Tax Appeal No. 8 of 2017 (Kenya High Court) (Cited for the general principle of "substance over form" applicable in cross-border IP licensing contexts).

1.5.1 The IT Act, 2000: Intermediary Liability and E-Pharmacies

The proliferation of online pharmacies (e.g., Netmeds, Tata 1mg, Practo) has created a new battleground for trademark disputes. The central legal question concerns the liability of these platforms (intermediaries) when third-party sellers list counterfeit or infringing drugs.

Section 79 Safe Harbour:

Under Section 79 of the IT Act, intermediaries are generally exempt from liability for third-party content hosted on their platforms, provided they act merely as facilitators and observe "due diligence".[31] However, this "safe harbour" is not absolute.

Active vs. Passive Intermediaries:

In landmark cases like *Christian Louboutin SAS v. Nakul Bajaj*[32] and the recent *Tata 1mg* litigation, courts have distinguished between "passive" marketplaces and "active" participants. If an e-pharmacy platform plays an active role in logistics, payment collection, or the promotion of drugs, or if it uses a competitor's trademark (e.g., "Mankind") as a keyword to trigger advertisements for generic substitutes, it may lose Section 79 protection. The Delhi High Court has held that offering a trademark as a "drop-down menu option" for sellers constitutes "use" of the mark, thereby stripping the intermediary of its passive status.[33]

Dynamic Injunctions:

Recognising the speed at which rogue websites can proliferate, courts have started issuing "dynamic injunctions." In cases involving the sale of counterfeit medicines, a dynamic injunction allows the plaintiff to extend the court's blocking order to new mirror websites created by the infringer without filing a fresh lawsuit for each new URL.[34] This procedural innovation is critical in the digital pharma wars, where infringing domains typically mutate rapidly to evade enforcement.

[31] The Information Technology Act, 2000, s. 79 (India).
[32] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 (76) PTC 508 (Del).
[33] *Tata Sons Pvt. Ltd. v. 1mg Technologies Pvt. Ltd. & Anr.*, CS(COMM) 711/2023 (Del HC).
[34] *UTV Software Communication Ltd. v. 1337X.TO and Ors.*, 2019 (78) PTC 243 (Del).

1.5.2 The Digital Personal Data Protection Act, 2023 (DPDP Act)

The enactment of the DPDP Act in August 2023 introduces a sophisticated layer of compliance and complexity to trademark enforcement.[35]

The Privacy-Enforcement Paradox:

Trademark enforcement investigations often rely on identifying the individuals behind infringing online listings. Historically, this involved accessing publicly available WHOIS data or compelling registrars to disclose registrant details. The DPDP Act classifies such data as "personal data," and Data Fiduciaries (including domain registrars and e-commerce platforms) are now strictly regulated in their handling of this information.[36] Section 8 of the DPDP Act outlines the duties of Data Fiduciaries. While there are exemptions for the "prevention of offence" or compliance with a "judgment or order," the default setting has shifted towards privacy.[37] This creates a hurdle for brand owners: to sue an infringer, they need the infringer's identity; but to get the identity, they may now need a court order, as platforms are reluctant to share data voluntarily for fear of violating the DPDP Act's stringent penalties (up to ₹250 crore). This effectively mandates a judicial route for what was previously often a pre-litigation investigative step.

Data-Linked Trademark Issues:

Furthermore, pharmaceutical companies often collect patient data through "Patient Support Programs" associated with specific branded drugs. The DPDP Act's consent architecture now governs this data collection. A breach of this data or its misuse for marketing unconsented products could lead to severe penalties and reputational damage that dilutes the trademark's value.[38] The "right to privacy" affirmed in the *Puttaswamy* judgment now competes directly with the "right to property" inherent in a trademark, requiring a delicate judicial balancing act in every enforcement proceeding involving personal data.[39]

[35] The Digital Personal Data Protection Act, 2023 (India).
[36] *Id.* at s. 2(t).
[37] *Id.* at s. 8.
[38] "Impact of DPDP Act and Rules on Pharmaceutical Companies" *Legal500* (2025).
[39] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

1.6 Challenges in the Pharmaceutical Sector

1.6.1 Online Pharmacies and "Algorithmic Passing Off"

The rise of e-pharmacies has exacerbated the risks of passing off, introducing the concept of "algorithmic passing off." Algorithms on these platforms are designed to maximise sales, often by suggesting "substitutes" when a user searches for a specific branded drug. For instance, a search for the branded drug "Crocin" might trigger a prompt: "Cheaper alternative available: Paracetamol-X."

- **The Legal Challenge:** Does this constitute infringement? While Section 30(1) of the TMA 1999 permits comparative advertising provided it is in accordance with "honest practices," the use of a trademark to divert traffic to a competitor can be problematic. If the algorithm presents the alternative in a way that suggests it is from the *same* manufacturer or endorsed by the brand owner, it veers into infringement under Section 29(8) (unfair advantage) and passing off.[40]

- **Jurisdictional Ambiguity:** Online sales blur traditional territorial boundaries. A drug that is trademark-protected in one state might be shipped from another where the mark is less established, or where a different entity holds rights. Courts are increasingly grappling with "long-arm jurisdiction," asserting authority based on the "effects doctrine" where the harm is felt by the consumer rather than just the defendant's location.[41]

1.6.2 Counterfeit Medicines and Supply Chain Integrity

India's status as the "pharmacy of the world" is perpetually threatened by the infiltration of counterfeit drugs into the supply chain. Trademarks are the first line of Defence, but traditional visual inspection is failing against sophisticated counterfeiters who can replicate holograms and packaging (trade dress) with high fidelity.

Technological Solutions: Blockchain and AI:

To combat this, the industry is turning to advanced technologies.

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[40] The Trade Marks Act, 1999, s. 29(8).
[41] *Tata Sons Pvt. Ltd.*, *supra* note 81.

- **Blockchain Pilots:** NITI Aayog, in partnership with Oracle, Apollo Hospitals, and Strides Pharma Sciences, has initiated a pilot project to track drugs using blockchain technology.[42] This system creates an immutable ledger of the drug's journey from the manufacturer to the patient. By linking the physical product (via a QR code or serial number) to a digital blockchain record, stakeholders can instantly verify the medicine's provenance. If a drug's digital "twin" does not match the blockchain record, it is flagged as a potential counterfeit, thereby protecting the integrity of the manufacturer's trademark.[43]

- **AI in Enforcement:** Artificial Intelligence tools like **Entermark** and **ExaMatch** are revolutionising trademark monitoring.[44] These tools utilise computer vision and natural language processing to scan millions of images and listings across the internet, identifying potential infringements that human investigators would miss. They can detect "look-alike" logos on social media, flag phonetic similarities in new trademark applications (preventing the registration of confusing names), and monitor unauthorised sales on e-commerce platforms. This shift from reactive litigation to proactive, AI-driven monitoring represents the future of pharmaceutical brand protection.

1.7 Comparative Evolution Analysis

The following table synthesises the evolutionary phases of trademark law in India, highlighting the specific impact on the pharmaceutical sector and the increasing relevance of digital technologies.

Era	Key Legislation / Case Law	Pharma Impact	Digital Relevance
Pre-1999	**Trade & Merchandise Marks Act, 1958** *Amritdhara Pharmacy v. Satya Deo Gupta*	**Limited Protection:** No service marks for hospitals. Rigid definition of "mark." High evidentiary burden for passing off. Weak protection for INNs.	**Minimal:** Pre-internet era. Infringement was physical (counterfeits in brick-and-mortar shops).

[42] NITI Aayog, *Blockchain: The India Strategy* (Jan. 2020).
[43]"NITI Aayog, Oracle pilot real drug supply chain with blockchain, IoT" *Oracle Press Release* (Sep. 28, 2018).
[44]"Entermark Launches India's First AI Trademark Monitoring Tool" *Business Standard* (2024).

	(1963)		
1999-2010	**Trade Marks Act, 1999** *Cadila Health Care v. Cadila Pharma* (2001)	**Paradigm Shift:** Recognition of Shape/Colour marks (S. 2(1)(zb)). S. 13 bars INNs. *Cadila* establishes "Strict Scrutiny" & "Imperfect Memory" tests, lowering the injunction threshold.	**Emerging:** Domain name disputes (*Satyam Infoway*). Early cybersquatting cases—basic website takedowns.
Post-2010	**Trade Marks (Amendment) Act, 2010** (Madrid Protocol) *Novartis v. Union of India* (2013)	**Strategic Shift:** Global integration via Madrid. *Novartis* patent denial pushes strategic reliance on trademarks/trade dress—rise of "Look-alike" trade dress litigation.	**High:** E-commerce boom. Intermediary liability (S. 79 of the IT Act) is central to blocking online counterfeits.
Current (2020s)	**DPDP Act, 2023** *Tata 1mg* & *Amazon* cases	**Data-Linked Enforcement:** Privacy laws complicate the identification of infringers (WHOIS redacted). Focus on "Dynamic Injunctions" against rogue e-pharmacies.	**Critical:** AI for infringement detection. Blockchain for supply chain provenance. Data privacy vs. IP enforcement conflicts.
Future Projections	**Proposed Digital India Act** AI Regulations	**Predictive Protection:** AI acting as a "pre-filing" filter for confusing names. Potential new torts for "algorithmic passing off."	**Integrated:** Seamless automated takedowns. Smart contracts manage trademark licensing in supply chains.

1.8 Conclusion

The evolution of trademark laws in India, when viewed through a pharmaceutical lens, reveals a legal ecosystem in a state of constant, purposeful adaptation. It has transitioned from the rigid, colonial constraints of the 1958 Act to the dynamic, TRIPS-compliant framework of the 1999 Act. It is now grappling with the fluid complexities of the digital age. This journey highlights a consistent judicial and legislative trend: in the inevitable tension between proprietary commercial rights and public safety, the Indian legal system invariably tilts the balance in favour of the latter.

The *Cadila* judgment remains the bedrock of this jurisprudence, institutionalising the recognition that in a linguistically diverse and developing nation, the "likelihood of confusion" must be interpreted broadly to prevent life-threatening medication errors. However, the modern challenges facing the sector are no longer merely linguistic or visual; they are digital, algorithmic, and data-driven. The integration of the IT Act and the DPDP Act signifies that trademark law can no longer operate in a silo. Future enforcement strategies will require a sophisticated convergence of legal theory, data privacy compliance, and supply chain technologies.

As the industry advances towards AI-discovered drugs and blockchain-secured distribution networks, the law must evolve to address novel concepts such as "algorithmic passing off" and the friction between data privacy and IP enforcement. The "Evolutionary Gaps" identified in the comparative analysis serve as a critical roadmap for future research, suggesting that while the statutory framework is robust, its application in the digital-first, data-conscious pharmaceutical market remains a work in progress, requiring continuous vigilance and jurisprudential innovation.

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