



## A patently wrong regime

[sanskritias.com/current-affairs/a-patently-wrong-regime](https://sanskritias.com/current-affairs/a-patently-wrong-regime)

**(Mains GS 2 & 3 : Effect of policies and politics of developed and developing countries on India's interests, Indian diaspora. Important International institutions, agencies, their structure and mandates & Issues relating to intellectual property rights)**

### **Context:**

- Even an unprecedented pandemic can not upset the existing global regime governing monopoly rights over the production and distribution of life-saving drugs.
- Since the onset of COVID-19, the world has seen a reaffirmation of intellectual property rules that have served as a lethal barrier to the right to access healthcare over the last few decades.
- The neo-liberal order, under which these laws exist, is so intractable today that a matter as seemingly simple as a request for a waiver on patent protections is seen as a claim unworthy of exception.

### **Request for waiver:**

- On October 2, 2020, India and South Africa submitted a joint petition to the World Trade Organization (WTO), requesting a temporary suspension of rules under the 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- A waiver was sought to the extent that the protections offered by TRIPS impinged on the containment and treatment of COVID-19.
- Countries sought waiver to suspend the Covid-19 vaccine IPRs from four provisions of the TRIPS Agreement to facilitate prevention, containment and treatment of Covid-19.
- These four provisions are Section 1 on copyright and related rights, Section 4 on industrial designs, Section 5 on patents, and Section 7 on the protection of undisclosed information.

- The waiver is requested until the majority of the world's population has been made immune post-vaccination.
- The quick and efficient vaccination is the surest route to achieving global herd immunity against the virus.
- Thus if waiver will be allowed then countries will be in a position to facilitate a free exchange of know-how and technology surrounding the production of vaccines.

### **Patents invaluable to R&D but world needs vaccine:**

- A patent is a conferral by the state of an exclusive right to make, use and sell an inventive product or process.
- The well-established economic theory of patent protection suggests that patents foster innovation by giving a temporary monopoly to the innovator over their innovation, which allows them to recoup their investment as well as protect their innovation from imitation.
- For life-saving medicines and vaccines, billions of dollars go into research and development (R&D) and clinical trials.
- If the pharmaceutical companies are not able to appropriate the returns on their investment, they will have no incentive to invest in the development of new medicines in the future.
- In most countries, patent protection is given for about 20 years, post which generic companies can enter the market to produce cheaper biosimilars of those drugs.
- While the provision of monopoly rights over innovation is essential to advance science, it is often also misused by big pharma companies to charge exorbitant prices.
- This restricts access to these medicines at affordable prices by low- and middle-income countries.

### **Developed nations must come on board too:**

- The request for waiver has, since, found support from more than 100 nations.
- But a small group of states like the United States, the European Union, Canada, etc. are opposing the proposal, arguing that this move will de-incentivise pharma companies from investing in developing medicines and vaccines in future pandemics.
- Their reluctance comes despite these countries having already secured the majority of available vaccines, with the stocks that they hold far exceeding the amounts necessary to inoculate the whole of their populations.
- Their decision is all the more galling when one considers the fact that for the rest of the world mass immunisation is a distant dream.
- Reports suggest that for most poor countries it would take until at least 2024 before widespread vaccination is achieved.

- Unless the world population is vaccinated, the developed countries will remain under threat of virus mutation, as well as rendering the current set of vaccines ineffective.

### **A new world order:**

- In India, the question of marrying the idea of promoting invention and offering exclusive rights over medicines on the one hand with the state's obligation of ensuring that every person has equal access to basic healthcare on the other has been a source of constant tension.
- The colonial-era laws that the country inherited expressly allowed for pharmaceutical patents.
- But in 1959, a committee chaired by Justice N. Rajagopala Ayyangar objected to this on ethical grounds.
- It noted that access to drugs at affordable prices suffered severely on account of the existing regime.
- The committee found that foreign corporations used patents, and injunctions secured from courts, to suppress competition from Indian entities, and thus, medicines were priced at exorbitant rates.
- To counter this trend, Parliament put suggestions of the committee into law through the Patents Act, 1970, that monopolies over pharmaceutical drugs be altogether removed, with protections offered only over claims to processes.

### **The discrimination and WTO:**

- Change in Patents Act, 1970, allowed generic manufacturers in India to grow.
- As a result, life-saving drugs were made available to people at more affordable prices.
- However, negotiations had begun to create a WTO that would write into its constitution a binding set of rules governing intellectual property.
- In the proposal's vision, countries which fail to subscribe to the common laws prescribed by the WTO would be barred from entry into the global trading circuit.
- It was believed that a threat of sanctions, to be enforced through a dispute resolution mechanism, would dissuade states from renegeing on their promises. With the advent in 1995 of the TRIPS agreement this belief proved true.

### **Refuting objections:**

- Two common arguments are made in response to objections against the prevailing patent regime.
- One, that unless corporations are rewarded for their inventions, they would be unable to recoup amounts invested by them in research and development.

- Two, that without the right to monopolise production there will be no incentive to innovate.
- However both of these claims have been refuted time and again.

### **Refuting profitability argument:**

- It has been reported that the technology involved in producing the Moderna vaccine in the U.S. emanated out of basic research conducted by the National Institutes of Health, a federal government agency, and other publicly funded universities and organisations.
- Similarly, public money accounted for more than 97% of the funding towards the development of the Oxford/AstraZeneca vaccine.
- Big pharma has never been forthright about the quantum of monies funnelled by it into research and development.
- It's also been clear for some time now that its research is usually driven towards diseases that afflict people in the developed world.
- Therefore, the claim that a removal of patents would somehow invade on a company's ability to recoup costs is simply untrue.

### **Refuting 'no incentive to innovate' argument:**

- The idea that patents are the only means available to promote innovation has become something of a dogma. But other appealing alternatives have been mooted.
- The economist Joseph Stiglitz is one of many who has proposed a prize fund for medical research in place of patents.
- According to him, under the current system, "those unfortunate enough to have the disease are forced to pay the price... and that means the very poor in the developing world are condemned to death".
- Thus a system that replaces patents with prizes will be "more efficient and more equitable".
- In that system incentives for research will flow from public funds while ensuring that the biases associated with monopolies are removed.

### **Conclusion:**

- The Covid-19 vaccine IPR waiver proposal has gained support from the majority of the countries and several leaders in developed countries too.
- If nation states are to act as a force of good, they must each attend to the demands of global justice.
- The developing countries cannot continue to persist with rules granting monopolies which place the right to access basic healthcare in a position of constant peril.

- Thus countries hope the WTO discussions now break the impasse to reach a consensus on the waiver.

**IAS / PCS**  
**Online Video Course**

सामान्य अध्ययन  
+  
वैकल्पिक विषय  
(इतिहास एवं भूगोल)



**15%** Discount for  
Next 500 Students

**IAS / PCS**  
**Pendrive Course**

सामान्य अध्ययन  
+  
वैकल्पिक विषय  
(इतिहास एवं भूगोल)



**15%** Discount for Next  
500 Students