



Intellectual property waiver for Covid-19 vaccines

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(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:

- The United States announced support for waiving intellectual property protection for Covid-19 vaccines, saying extraordinary circumstances call for extraordinary measures.
- States Trade Representative Katherine Tai said the US will pursue “text-based negotiations” on the waiver at the World Trade Organization (WTO).
- The initial IP waiver proposal by India and South Africa last October included vaccines, treatments, diagnostic kits, ventilators, protective gear and other products related to the Covid-19 pandemic.

Text based negotiations:

- Text-based negotiations involve negotiators exchanging texts with their preferred wording and then thrashing out a consensus on the working.
- Negotiations are expected in a mix of virtual and in-person meetings.
- These negotiation will take time given the consensus-based nature of the institution and the complexity of the issues involved
- All 164 WTO member countries must reach consent on such decisions, with any one member able to veto them, so there could be a lot of red pencils out
- The European Union, which had earlier opposed the waiver, has now stated its intent to discuss the US-backed proposal.

What does the intellectual property waiver for Covid-19 vaccines mean?

- The IP waiver might open up space for production of Covid vaccines with emergency use authorisations (EUA) such as those developed by Pfizer, Moderna, AstraZeneca, Novavax, Johnson & Johnson and Bharat Biotech — on a larger scale in middle-income countries.
- Most production is currently concentrated in high-income countries; production by middle-income countries has been happening through licensing or technology transfer agreements.
- Ramping up production capacities will be a lengthy process — a reason being cited by pharmaceutical companies against the move.
- Most analysts expect this to take at least a few months; it is likely the agreement will be targeted by the WTO's next ministerial conference in end-November.
- Experts said the IP waiver proposal should include other interventions going forward.
- Amid the pandemic, the “widest possible” access to these interventions is limited by production capacity as well as the propensity of high-income countries to acquire “most of the supplies”.
- Countries including Canada, South Korea, and Bangladesh have shown interest in making Covid vaccines if they can get a patent waiver.

What are the deterrents for the waiver?

- In a joint letter to US President Joe Biden in March, pharma companies including Pfizer and AstraZeneca had opposed the proposed waiver.
- Companies saying that eliminating IP protections would “undermine the global response to the pandemic”, including the ongoing efforts to tackle new variants.
- It could also create confusion that could potentially undermine public confidence in vaccine safety and create a barrier to information sharing and “most importantly, eliminating protections would not speed up production.”
- Microsoft founder Bill Gates has expressed reservations against tweaking IP rules and sharing Covid-19 vaccine technologies.
- His justification for not sharing vaccine tech with developing countries is “that it would not be feasible for a company to move vaccines to a developing nation”.
- Gates mentioned India, and said that even if the transfer were to happen, it is because of “our grants and expertise”.

The biases of developing world:

- The argument that developing countries do not have the capacity to speedily produce vaccines goes against earlier moves towards a patents regime for generic drugs.
- Between 1972 and 2005, India had adopted **process patenting rather than product patenting**, and built up a huge generic industry.

- A number of companies from different countries have said they are ready to produce, and quality can always be assessed.
- If western companies are interested in contracting Indian companies for manufacturing their vaccines in India, then how can few companies say that india do not have the quality to produce on their own.

proposal from India and South Africa:

- 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.

What are patents and IP rights:

- A patent represents a powerful intellectual property right, and is an exclusive monopoly granted by a government to an inventor for a limited, pre-specified time.
- It provides an enforceable legal right to prevent others from copying the invention. Patents can be either process patents or product patents.
- A product patent ensures that the rights to the final product is protected, and anyone other than the patent holder can be restrained from manufacturing it during a specified period, even if they were to use a different process.
- A process patent enables any person other than the patent holder to manufacture the patented product by modifying certain processes in the manufacturing exercise.

- India moved from product patenting to process patenting in the 1970s, which enabled India to become a significant producer of generic drugs at global scale, and allowed companies like Cipla to provide Africa with anti-HIV drugs in the 1990s.
- But due to obligations arising out of the TRIPS Agreement, India had to amend the Patents Act in 2005, and switch to a product patents regime across the pharma, chemicals, and biotech sectors.

Besides patents, other roadblocks to scaling up production:

- The International Federation of Pharmaceutical Manufacturers & Associations (IFPMA) has pointed to other “real challenges” in scaling up production and distribution of Covid-19 vaccines.
- These include trade barriers, bottlenecks in supply chains, scarcity of raw materials and ingredients in the supply chain, and the unwillingness of rich countries to share doses with poorer nations.
- The scarcity of raw materials has been a growing issue for ramping up production; several manufacturers have been relying on specific suppliers, and alternatives are limited.
- Countries like the US had blocked exports of critical raw materials used in the production of some Covid-19 vaccines using regulations like the American Defence Production Act.
- This led to a delay in the production of Covid vaccines by some companies in India.
- Mahima Datla, managing director of Biological E, which is making the J&J vaccine in India, had said US suppliers have told global clients they may not be able to fulfil their orders because of the Act.

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.

Covid19

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