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2nd -Internal Assessment – Patent Law and Practice

Research outline

**Topic: Pharmaceutical Patents during the
Pandemic**

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INTRODUCTION

India is currently one of the leading the manufacturers in terms of the country's pharmaceutical sector. The country's pharmaceutical sector went from being an import depended sector in the 1950s to being one of the leading manufacturers in the pharmaceutical industry, today the industry is an economical manufacturer of highest caliber and quality pharmaceutical products. There were no patents placed upon the medications until 2005, patenting on pharmaceutical drugs was brought forward with the aim that patent protection will result in continued innovations as the products manufactured will be safeguarded which will ensure that the rivals won't be able to make generic versions of the products.

While the patenting on the products is done to ensure a company's monopolistic revenues and protects the corporations' economic interests which in turn ensures the conduction of effective research on the management of various diseases, the entire process becomes quite questionable when it comes to the usage of these innovations for public health in times of crises.

It has been a long-standing debate of patenting medicinal drugs during the times of crisis, this debate has been brought into the headlines once again during the global pandemic of covid 19.

The pandemic had led to the pharmaceuticals industries to innovate new medicines to overcome the current issue, the question arises if patenting them in such a situation where the medicine is required by mass public is reasonable.

The paper tries to explore the various aspect of the issue of pharmaceuticals during a public health crisis and tries to reach the solution which will be the most desirable one during a pandemic.

ISSUES ADDRESSED IN THE PAPER

- Whether Patenting of Pharmaceutical Products should be made compulsory during a global health crisis?
- If patenting is made compulsory during the crisis, how to fulfill right to medicine which is a fundamental right to every human individual?
- how will the right to medicine which is a fundamental right be fulfilled?

LITERATURE REVIEW

In the 1950, when Jonas Salk invented the polio vaccine, a question was asked to him that is “whether he is going to patent his invention?”, the reply he gave was “there is no patent could you patent the sun”. However, with the passage of time the human desire and needs has changed, and sardonically, in today times humanity is battling with the pandemic.

Dr Christian Dosten who is virologist at Bonn university in Germany stated that, proving patent right to an individual institution, means that patent holder will enjoy the monopoly of the price during the pandemic and keep the patent products beyond the reach of the most vulnerable population.¹

Before pandemic many efficacious medications for treatments like Hepatitis C, leukemia, HIV/AIDS and tuberculosis are heavily patented by the dominant supplier countries like India, China and USA. According to the data released by World health Organization², indicates that about 9.3 million people could have possibly been benefitted from novel oral anticoagulants in developing countries, if these countries have access to drug patent status. Even world richest person and philanthropist Bill Gates have stated that “he has no intention or will not share his vaccine formula to developing countries”³

Dr Thomas J. Bollyky and Jennifer Nuzzo are the directors of global health Programme, have stated that a “patent waiver is the necessity of the pandemic, and even patent waiver will not be enough. It is not a time to earn profit from them and have an extraordinarily power ally in that fight to protect their bottom line, human lives to be dammed”⁴. They also asked the other countries to create a geographically equal distribution of vaccine network and produce vaccine prototype for the covid 19 crisis and future pandemic.

Dr. David Baltimore who is an American virologist and noble prize winner has stated in one of the interviews that compulsory license is a negotiation strategy for high income countries.

¹ Christian Dosen, Coronavirus Patent debate, 9, academia, 15-19, 17, 21 May 2021.

² Esteban Burrone “Patent pooling to increase access to essential medicines” world health organization bulletin

³ Regina Mihindukulasuriya, Vaccine Racist: Bill gates say no to sharing vaccine tech with developing nation, The Print 1 May 2021. <https://theprint.in/world/vaccine-racist-bill-gates-says-no-to-sharing-vaccine-tech-with-developing-nations-draws-ire/649843/>

⁴ Anshu Siripari, The Debate over patent waiver for covid 19 vaccine, council foreign relation, 26 May 2021. <https://www.cfr.org/in-brief/debate-over-patent-waiver-covid-19-vaccines-what-know>

Compulsory license is considered to be legal tool to override patent protection on medicine and medical technologies.

Although there are many countries and virologists who are not in the support of the patent waiver, for instances countries like France, Japan, Australia Germany European Union and United Kingdom, they stated that “the limited factor of production of vaccine are production capabilities and high-quality standard not patent, there are so many vaccine factories in the world, and people are very serious about the safety of vaccines”⁵.

OBJECTIVE OF THE PAPER

The objective of the paper is to focus or address the issue of the pharmaceutical patent are necessary when the public health crisis is at the peak. Along with this, we have also included the reviews of virologists, whether they are in the support of patent waiver or not. At last, we would conclude our submission by giving our opinion on the same matter.

METHODOLOGY THAT WILL BE USED

A combination of primary and secondary sources will be utilized with major focus being on the secondary sources. The paper will use more Doctrinal method approach to analyze the various issues, the newspaper, articles and various journal reports will be used to incorporate various views and approaches of the primary issue of the paper.

EXPECTED OUTCOME/ CONCLUSION

The expected outcome of the paper is a better understanding of the process of pharmaceutical patenting in the country and to increase the understanding about the pros and cons of the entire patenting of pharmaceutical products. The paper also aims to increase awareness towards this process in a scenario of a pandemic and helps to understand the necessity of bringing a common ground between the patent of medicines and the issue of public health.

⁵ Ankita Agnihotri, Germany rejected US based proposal to waive vaccine patents, BBC, 6 May 2021.
<https://www.bbc.com/news/world-europe-57013096>

At last, we would like to conclude our submission by saying that the ambit of patentable subject matter has extended beyond machines and machine innovations, now it also includes pharmaceuticals and biological inventions. We should not treat humans like machines. Although there is no doubt that patent incentivize innovation provided an opportunity for investors to redeem their investment in scientific discoveries but not at the cost of human lives. In today time it is become the need that we should not include public health crisis invention into patentable subject matter. As the world unites in the support of pandemic, we should ensure that Covid treatment are affordable and accessible to everyone.

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