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Balancing Innovation and Affordability: India's Stance on IPR in Trade Deals

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ABSTRACT

The term 'Intellectual Property' can be defined as the creation and innovation of human intellect, they can be inventions, literature works etc. While inventing something new a man puts his manpower, intellect, time, energy and his monetary resources , as a result of their innovative idea they create an intangible property. The laws related to Intellectual Property gives the monopoly right to the owner of that intangible property. The 'owners' are provided with the legal rights over the property, they have the ownership of the property and only after their permission someone else can use the property They can be classified in the group of trademarks, copyrights, patents, geographical indications, industrial designs, layout design of semiconductor integrated circuit. The protection of Intellectual Property Rights (IPR) against unauthorized use or exploitation is a crucial function of legal procedures. For a set amount of time, these rights give inventors and creators the sole authority over their creations, works of art, trademarks, and private data. By preserving these rights, people and companies are encouraged to spend money on R&D and creative projects because they know their efforts will be rewarded without worrying about being exploited.

Developed nations frequently support strict intellectual property rights (IPR) clauses in international trade agreements as a means of securing investments and innovations. They contend that strong protection fosters innovation and ensures just compensation for intellectual property. On the other hand, developing countries like India argue that too strict intellectual property rights (IPR) regulations can hinder their ability to supply necessities, especially in industries like medicines where public health depends on affordable products.

***Keywords**: Intellectual property, developed nations, intangible property, trademarks, copyright.*

I. INTRODUCTION

The term 'Intellectual Property' can be defined as the creation and innovation of human intellect, they can be inventions, literature works etc. While inventing something new a man puts his manpower, intellect, time, energy and his monetary resources , as a result of their innovative idea they create an intangible property. The laws related to Intellectual Property

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From an invention to confidential information both can be considered as creations, and several forms of intellectual property are available to meet these varied demands;

- **Patent** is an exclusive right granted to the owner of an invention, granting them control over who can and how they can use it.
- Books, computer programs, artwork, music, movies, sculptures, databases, maps, and more are all protected by **Copyright**. It is a legal term used to describe an author's rights over his creations.
- **Trademarks** are a means of identifying one's products or services from those of another.
- **Trade Secrets** are intellectual property rights related to confidential information that can be licensed or sold; obtaining or using such information without permission is regarded as an unfair practice and a violation of intellectual property rights.

Developed nations frequently support strict intellectual property rights (IPR) clauses in international trade agreements as a means of securing investments and innovations. They contend that strong protection fosters innovation and ensures just compensation for intellectual property. On the other hand, developing countries like India argue that too strict intellectual property rights (IPR) regulations can hinder their ability to supply necessities, especially in industries like medicines where public health depends on affordable products.

II. AGREEMENT ON TRIPS

As the developments took place in the field of International Trade in the early 19th century, after the establishment of GATT various multilateral trade agreements were signed by the countries to fascilitate the global trade. One of the major multilateral agreement signed for the Intellectual Properties was agreement on Trade Related to Intellectual Property Rights. Under

this agreement the protection is provided to the IP right holders. They have been provided with the exclusive right of ownership and only they have the right to control and use the property for commercial purposes. By providing them this protection the creators and inventors freely trade their property without the fear of their right infringement. IPRs play a significant role in facilitating trade and market access. The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights generally sets minimum standards for the protection and enforcement of intellectual property rights in member countries. Operating since 1995, TRIPS also has a special place in world wide IP Laws and it is considered as acheivement of globalizing the superstructure if IPR laws aiming to protect Intellectual work within unilateral legal system inspite each nations having variant ecocomic level. Though it seeks to harmonize global rules for the enforcement of intellectual property, much controversy arose around its affect on public health and access to essential medicines, particularly in developing countries.

India has consistently advocated for a nuanced approach to IPR in trade deals, proposing alternative models that promote innovation without sacrificing access to essential goods.[3]In the view, one of the central goals of TRIPS is to promote innovation and creativity by allowing inventors and creators profit from their inventions or creations through intellectual property rights under enforceable law. By establishing net minimum standards for the protection of patents, copyrights trademarks and other forms of IPR, TRIPS stub to provide a more secure environment in which trade can be conducted. The purpose of these standards is to minimize distortions and restrictions on international trade, so as not to prevent effective protection of intellectual property rights. This has been a subject of some controversy in public health ever since TRIPS was adopted. Indeed, many from the developing countries have raised concerns that TRIPS-mandated patent protection can result in limited access to cheap medicines. This perspective is often met with resistance from developing nations like India, which fear that stringent IPR regulations could hinder their access to affordable essential goods, including medicines.[4]

Compulsory licensing - as permitted by the Doha Declaration - allows a government to authorize creation of a product which is under patent without approval from the owner when certain conditions are met. The mechanism helps countries to protect the availability of essential medicines in times of crisis. The declaration further paved the way for a transitional period that permitted certain flexibilities to least-developed countries under TRIPS until 2016, and an

[3] World Intellectual Property Organization, ‘’What are Intellectual Property Rights?’’ <https://www.wipo.int/about-ip/en/> accessed 11 july 2024

[4] UNCTAD, “Intellectual Property and Development: The Case of India”, <https://unctad.org/en/pages/PublicationWeb.aspx?publicationid=118> accessed 11 July 2024

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extension of such transitional period in respect to pharmaceutical patents until April 23,2033. Despite these flexibilities, the achievement of TRIPS provisions in general and Doha Declaration more specifically on ground has still to cross many a hurdle. The price of neglecting TRIPS is the loss of technical and legal capacities to use fully available flexibilities - especially for developing countries.

III. INDIAN INDUSTRY AND IPR

IPR is a type of legal documents which grants to creators, etc for their inventions (example patents), literary and artistic works (example copyrights), symbols names and images used in commerce. The aim of these rights is to stimulate the innovative and creative output that benefits inventors financial rewards from worldwide sales. Intellectual Property Rights are central in the world of international trade determining how goods, services and know-how will flow around the globe. Nevertheless, there remains a heated controversy among developed and developing countries on the adoption of IPR standards as trade agreements. Rich countries tend to demand tough IP protections as a way of protecting the investments and technology that they need. On the other hand, developing nations argue that such actions could stand in way of access to affordable medicines and technologies affecting public health and development. India's stand on IPR in trade/discourse is cautious liberalisation with an aim and objective of serving the public interest. India has been very much concerned in stressing the importance of flexibility in the IPR system, for example, to its technology and development agenda, or in relation to issues of public health.

India's stance on IPR in trade deals carries significant implications for its's economy and society .[5]Earlier India did not succumb to the pressure of developed nations for stringent IPR norms particularly in case of drugs and medicines. This position is attributable to the fact that in the early period of the HIV/AIDS epidemic in the 1990s, access to effective, cheap generics was critical. Therefore, using options such as compulsory licensing and parallel importing permitted under the TRIPS agreement, India has been able to ensure access to essential medicines. Concerning the IPR, India participates in trade negotiations with a position that seeks for a balance. It speaks to the importance of having space for policies in matters of public health, in knowledge access, and industries. For example, during the RCEP trade talks, India was against the inclusion of measures that would increase the IPR standards claiming that such measures will hinder access to cheaper medicines and seeds.But, the preservation of traditional

[5] UNCTAD, "India's Stance on IPR: Economic and Social Implications", http:// unctad.org/en/pages/PublicationsWeb.aspx?publicationid=118 accessed 11 July 2024

knowledge and genetic resources could also be among the important focuses of India's IPR strategy. The country has been quite active in international debates and negotiations on the regulation on the use of traditional knowledge, biopiracy and fair and benefit-sharing in the use of genetic resources. While remaining rather conservative, India understands the necessity of having a strong IPR system for attracting the FDI and encouraging innovations. Some of the new policies include National IPR Policy that seeks to enhance the country's IPR structure and facilitate awareness and efficiency in administration.

The pharmaceutical industry in India is world famous for its affordable generic drugs, which are required to ensure medicine accessibility within the country and abroad. In low resource countries, such options of generics are particularly critical as cost is a major limiting factor in healthcare. Mandatory Standard Minimum IPR Agreement - The TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) is administered by the World Trade Organization under its practice to prescribe standard terms in IP rights expansion with signatory countries. TRIPS, harmonizes IPR laws globally but it is the source of many debate among developing nations that resulting in a conflict between national priority public health right and international obligations to provide protection on patent rights.

A recent instance was the rejection by India of more rigorous IPR provisions proposed during trade talks with the European Union (EU). India, on the other hand did not agree to EU's demand for strict IPR standards including that of Data exclusivity and Patent term extensions. New Delhi has said concerns over its pharmaceutical industry and the public health of a large population prompted it to take such stiff stand. During the talks, India highlighted that it was important for IPR rules to be flexible so as not jeopardise access to affordable medicines. An IPR provisions institution were met with a wall when trade deal negotiations eventually failed.

Wealth and welfare of Indian poor in cross-fire ride on India's IPR stance in trade deals tight IPR standards are opposed by the pharmaceutical industry because they would retard availability of low-priced generics essential for domestic healthcare as well export markets. The issue of access to medicines has not gone away and India's role in the system serves as a bulwark against high-priced drugs that keeps life-saving medicine out reach for those who need it. But such a position could deter foreign investment - multinationals usually want patent laws robust enough to protect their innovations.

IV. THE ONGOING DEBATE

Debate is still active concerning anti-poverty reform of TRIPS. It also calls for flexibilities in patent laws and mechanisms that ensure IPR protections do not block access to essential goods

like medicine. This is always a difficult line to walk as the interests of retaining innovation and public health in both developed and developing nations are at stake. Discussions are continuing as the right balance is sought to maintain these two imperatives. TRIPS sets the minimum standards of protection and enforcement for intellectual property rights (IPR) in order to create a level playing field for innovation, production, trade and competition. This deal has received withering criticism for doing the opposite, specially from developing countries as it might impede access to essential items such as medicines. Conversely, the needs of these countries are increasingly informing a live debate about amending TRIPS.

A major criticism of TRIPS is that the adoption and enforcement of stringent patent protection for essential medicines may lead to high prices which prevent access; in response, some developing countries will authorize compulsory licensing on those grounds. The stakes are even higher in public health crises, where facilitating access to affordable medicine can drive home the difference between life and death. Opponents, of course, counter that the existing TRIPS agreement unfairly protects huge drugmakers with vast patent portfolios on light-saving medications. In recognition of these concerns, several suggestions have been made to reform TRIPS. An important suggestion is the loosening of patent laws that would enable developing countries to issue compulsory licenses more readily. Article 31 of the TRIPS agreement allows governments to authorize compulsory licenses thereby allowing any entity or entities, official and private, within their jurisdiction permission/license to produce a patented product without the consent/participation of patent holder. Compulsory licensing is allowed under extremely limited circumstances like public health crises only. Although TRIPS already contains provisions for compulsory licensing, the current system is slow, cumbersome and subject to legal challenges. By being more flexible on this front, developing countries might be able to secure wider and cheaper access to essential medicines.

The second prepared change recommendation concerns the strengthening of the processes for the so-called parallel imports. PATENT Co-pipe imports can be defined as the ability of a country to acquire the patented products belonging to a specific country from other markets offering the same products at cheaper prices without the consent of the owner of the patent. Regarding, this it could help in correcting the fault of high costs and poor availability of the essential products. Enhancing provisions of Parallel Importation under the TRIPS agreement might afford Developing nations a window of accessing life necessities that include medicines and other products at a cheaper price. Furthermore, there have been cries to increase its technical and financial assistance to the developing countries to help them put in place sufficient structures and stock to implement provisions of TRIPS flexibilities. Examples are seminars or

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training of legal and regulatory employees and aid to domestic manufacture of patented medicines through generic products. One can even argue that such hikes in capability buildup will help the developing states to identify the pertinent problems of IPR and health in their countries and thus improve the measures initiated. Reaching a consensus on reforming TRIPS is complex, requiring a delicate negotiation process that acknowledges the diverse needs and perspectives of different nations.[6]

V. CONCLUSION

India's stand on IPRs has been discussed in the context of the EU FTA, having shown the detailed analysis of the areas of IPRs touched upon in international trade deals in general. Focusing on the role and the objectives of IPR, this definition points to the fact that it exists to protect the invention, to stimulate initiative, and to guarantee that individuals, who invented something, will get the due recognition, as well as the financial remuneration. The conflict between the developed and the developing world on the issue of IPR relates to the call by the former for strong measures to support inventions, while the latter stresses the importance of reasonable measures that would allow the receipt of affordable medicines and the development of economies. India's pharma industry is a significant contender on the global stage, recognized for developing plenty of cheap generic drugs that solve major public health issues. TRIPS comprises the basis for IPR rights internationally; however, its standards are quite demanding, which sparked controversy and chief concern to the country focusing on public health and economic interests.

India's approach, characterized by a strong emphasis on public health and affordability, reflects the challenges faced by developing nations in navigating the complexities of IPR protection in a globlazied economy.[7]This is why, India has been in opposition to stringent IPR provisions for its products due to the issues such as public health, economic progression and fear of discouragement of local innovators. Stringent IPR protection might have a great influence on the Indian pharmaceuticals both in terms of cost and market access and the overall competitiveness of the industry would be dampened. For India, affordability of medicines is central, and intensification of IPRs can potentially have a counter productive effect in the health department turning a blind eye on the region's needs for an access to swift, efficient, and cheap healthcare. India has suggested other selective measures against IPRs including compulsory

[6] The Hindu, "Reforming TRIPS: A Complex Task," mailto:< https://www.thehindu.com/business/Industry/reforming-trips-a-complex-task/article33456768>accessed 10 july 2024

[7] The Times of India, "India's IPR Dilemma: Navigating a Globalized Economy," <https://timesofindia.indiatimes.com/india/indias-ipr-dilemma-navigating-a-globlazied-economy/articleshow/74567886.cms> accessed July 2024

licensing, imported parallel goods and products, and standardisation by patent pooling. All these alternatives are made targeting a right balance between the rights of inventors and the owners of patents and the rights of the consumers and the users who need cheap medicines and technologies.

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